APEC/ABAC Catalogue of Free Trade Agreements and Regional Trade Agreements Among APEC Economies

APEC Business Advisory Council (ABAC)'s 2006 / APEC Trade and Investment Liberalization & Facilitation Working Group (TILFWG)

2006

Reproduced electronically in July 2010

Produced by
APEC Business Advisory Council (ABAC)'s 2006 / APEC Trade and Investment Liberalization & Facilitation Working Group (TILFWG)

For
Asia Pacific Economic Cooperation Secretariat
35 Heng Mui Keng Terrace
Singapore 119616
Tel: (65) 68919 600
Fax: (65) 68919 690
Email: info@apec.org
Website: www.apec.org

APEC#210-AB-01.1

TABLE OF CONTENTS

FEDEX ADVERTISEMENT

INTRODUCTORY LETTER

ABAC MEMBERS LIST

CONTRIBUTORS

WTO COMPARATIVE BASELINE

FTA/RTA MATRIX

AGREEMENTS EXCERPTS

1. ASEAN 1-1
2. AUSTRALIA-NEW ZEALAND 2-1
3. AUSTRALIA-SINGAPORE 3-1
4. AUSTRALIA-THAILAND 4-1
5. AUSTRALIA-UNITED STATES 5-1
6. CANADA-CHILE 6-1
7. CHINA-ASEAN 7-1
8. CHINA-CHILE 8-1
9. CHINA-HONG KONG 9-1
10. JAPAN-MEXICO 10-1
11. JAPAN-SINGAPORE 11-1
12. KOREA-CHILE 12-1
13. KOREA-SINGAPORE 13-1
14. MEXICO-CHILE 14-1
15. NORTH AMERICAN FTA (NAFTA) 15-1
16. NEW ZEALAND-SINGAPORE 16-1
17. NEW ZEALAND-THAILAND 17-1
18. PERU-CHILE 18-1
19. PERU-MEXICO 19-1
20. PERU-UNITED STATES 20-1
21. PAPUA NEW GUINEA-AUSTRALIA. 21-1
22. TRANS-PACIFIC SEP 22-1
23. US-SINGAPORE 23-1
24. US-CHILE 24-1

USC/MARSHALL SCHOOL ADVERTISEMENT

I know their track record. They know my business.

I trust FedEx to move my products to my customers from pickup to delivery.

When I ship freight or packages internationally, I count on FedEx from the time they are picked up until they're delivered. So I can easily monitor my shipments and relax knowing they are in capable hands. Plus, with FedEx, I can rely on years of customs experience and simple pricing that is easy to understand. If you ship overseas, there's only one way to go – FedEx. For details and all the tools to make your international shipping easy, go to **globalcomputer.fedex.com**.

FedEx® Express

Relax, it's FedEx.®

INTRODUCTION

It is with great pleasure that the APEC Business Advisory Council (ABAC)'s 2006 Trade and Investment Liberalization & Facilitation Working Group (TILFWG) and APEC present this APEC/ABAC Catalogue of Free Trade Agreements and Regional Trade Agreements Among APEC Economies.

The founding of the World Trade Organization as a result of the Uruguay Round is a significant milestone in multilateral trade liberalization and in the international trade regime. But other trade regimes such as the European Customs Union, Mercosur, ASEAN, NAFTA, CIS and others are making an impact on global trade. Furthermore, the onset of bilateral trade agreements is also increasing trade flows between parties to such agreements. APEC has also been working toward regional trade liberalization although on a voluntary basis.

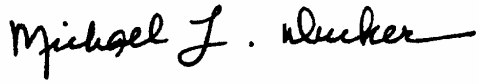
Trade liberalization is increasingly occurring via both multilateral and bilateral or regional trade agreements, which, while creating new trade opportunities for participants, sometimes displace trade flows from other trading partners. For businesses, having multiple sets of rules of origin and other trade rules can lead to greater administrative and transactional cost.

This catalog, which was proposed by the TILFWG in the ABAC I meetings in Singapore, attempts to serve as a tool to better understand the intricacies and the challenges of the plethora of trade agreements being completed among APEC economies.

APEC has also been addressing this issue by pressing for model measures in bilateral and regional trade agreements. And we hope this catalogue of FTAs/RTAs will enhance our understanding of the trade consequences of the FTA-RTA phenomena.

We hope that this catalogue will be useful for APEC businesses and governments.

Chair
APEC Business Advisory Council (ABAC)
2006



Mr. Michael L. Ducker
Chair
APEC Business Advisory Council (ABAC)
Trade & Investment
Liberalization & Facilitation
Working Group (TILFWG) 2006

ABAC FOUNDING AND STRUCTURE

The APEC Business Advisory Council (ABAC) was created by the APEC Economic Leaders in November 1995 to provide advice on the implementation of the Osaka Action Agenda and on other specific business sector priorities, and to respond when the various APEC for a request information about business-related issues or to provide the business perspective on specific areas of cooperation.

ABAC comprises of up to three members of the private sector from each economy. ABAC members are appointed by their respective Leaders, and represent a range of business sectors, including small and medium enterprises. The economy determines the term of membership of each appointee as well as its own administrative arrangements and staff support.

The ABAC International Secretariat based in Manila, the Philippines serves all members and all economies and maintains a website. Funding is provided through a system of annual dues, which are structured to reflect the size of each economy, following the APEC formula.

2006 ABAC Members

Australia

Mr. Peter Charlton
Chairman
First Charlton Communications

Mr. Michael Crouch
Executive Chairman
Zip Industries (Aust) Pty. Ltd.

Mr. Mark Johnson
Deputy Chairman
Macquarie Bank Ltd.

Brunei Darussalam

Mr. Stephen Ong
Managing Director
Teck Guan Holdings Pte. Ltd.

Ms. Fauziah DSP Hj Talib
Founder and CEO
IQ-Quest Company

Hj Salleh Bostaman Zainal-Abidin
Director
Brunei Shell Petroleum Co.Sdn. Bhd.

Canada

Mr. Gordon Chu
Senior Policy Advisor for Asia
Vancouver International Airport Authority

Mrs. Andrina Lever
President
Lever Enterprises

Mr. Nguyen Huu Trung
Senior Vice President
Finances, Strategic Alliances & International
Caisse Centrale Desjardins

Chile

Mr. Jose Pablo Arellano
Chairman/CEO
Chilean Copper Corporation (CODELCO-Chile)

Mr. Andrónico Luksic
Vice Chairman
Banco de Chile

Mr. Hernán Somerville
President
Chilean Association of Banks and Financial Institutions

China

Mr. Ma Yun
Chief Executive Officer
Alibaba (China) Technology Co. Ltd.

Ms. Wang Lili
Executive Vice President and Board Member
Industrial and Commercial Bank of China

Mr. Zhang Lijun
Chairman
China APEC Development Council

Hong Kong, China

Dr. Raymond Ch'ien Kuo-fung
Executive Chairman
Chinadotcom Corporation

Anthony John Lindell Nightingale
Managing Director
Jardines Matheson Holdings Ltd.

Mr. Chee Chen Tung
Chairman and Chief Executive Officer
Orient Overseas (International) Ltd.

Indonesia

Mr. Rudjito Mochtar
Chairman, Board of Commissioner
Indonesia Deposit Insurance Corp.

Mr. John Prasetio
Chairman
CBA Asia

Mr. Arwin Rasyid
President Director and CEO
P.T. Telekomunikasi Indonesia Tbk.

Japan

Mr. Yoshio Ishizaka
Senior Advisor
Toyota Motor Corporation

Mr. Yasuo Kanzaki
Special Advisor
Nikko Citigroup Ltd.

Mr. Yukio Shohtoku
Corporate Advisor
Matsushita Industrial Co. Ltd.

Korea

Mr. Jae-Hyun Hyun
Chairman
Tong Yang Group

Mr. Younghoon David Kim
Chairman and Chief Executive Officer
Daesung Group

Mr. Jay-Joon Yoon
Chief Executive Officer
Sundosoft, Inc.

Malaysia

Tan Sri Dato' Azman Hashim
Chairman
AmBank Group

Tan Sri Dato' Ir. MD Radzi Mansor
Chairman
Telkom Malaysia Berhad

Dato' Dr. Tan Tat Wai
Group Managing Director/CEO
Southern Steel Berhad

Mexico

Mr. Ricardo Charvel
Vice President
Cementos Mexicanos (CEMEX) Group

Mr. Francisco Gutierrez
Director, Business Associations
Cementos Mexicanos (CEMEX) Group

Mr. Julio Millan
Chairman and CEO
Coraza Corporacion Azteca, S.A. de C.V.

New Zealand

Mr. Philip Lewin
Chief Executive Officer
Positively Wellington Business

Mrs. Wendy Pye
Managing Director
Wendy Pye Group

Sir Dryden Spring
Chairman
ANZ National Bank

Papua New Guinea

Mr. Wayne Kenneth Golding
Chairman
Manufacturers' Council of PNG

Mr. Matthew W.E. Tjoeng
Managing Director
Shine Way Development Ltd.

Peru

Mr. Enrique Gubbins
Executive Director
Sudamericana de Fibras S.A.

Mr. Eduardo Hochschild
President
Hochschild Group

Mr. Juan Francisco Raffo
Chairman
Raffo Group

Philippines

Mr. Benigno Ricafort
Chairman
The Management Centre & Resort Group, Inc.

Mr. Roberto Romulo
Chairman
Philam Insurance Co., Inc.

Ms. Doris Magsaysay-Ho
President and CEO
Magsaysay Group of Companies

Russian Federation

Mr. Oleg V. Deripaska
Chairman
OAO Bazoviy Element

Mr. Andrey L. Kostin
Chairman and CEO
Bank of Foreign Trade

Dr. Alexander I. Medvedev
Deputy Chairman
OAO Gazprom

Singapore

Ms. Chong Siak Ching
President and CEO
Ascendas Pte. Ltd.

Mr. Ng Ser Miang
Chairman
TIBS International Pte. Ltd.

Mr. Teng Theng Dar
Chief Executive Officer
Intraco Ltd.

Chinese Taipei

Mr. Theodore M.H. Huang
Chairman
TECO Electric & Machinery Co. Ltd.

Mr. Henry Kao
Vice Chairman
I-Mei Foods Co., Ltd.

Dr. Jeffrey Koo
Chairman and CEO
Chinatrust Financial Holding Co., Ltd.

Thailand

Mr. Chavalit Nimla-or
Member of the Board
Federation of Thai Industries

Dr. Savaraj Sachchamarga
Chairman and CEO
Noodle Ratchada Co. Ltd.

Dr. Twatchai Yongkittikul
Secretary General
Thai Bankers' Association

USA

Mr. Michael Ducker
Executive Vice President, International and Express Freight Service
FedEx Express

Mr. Spencer Kim
Chairman
CBOL Corporation

Mr. Michael Phillips
Chairman
Russell Investment Group

Vietnam

Mr. Le Quoc An
Chairman
Vietnam Textile and Garment Corporation (VITAS)

Mr. Hoang Van Dzung
First Vice Chairman & Executive Vice President
Vietnam Chamber of Commerce and Industry

Dr. Vu Viet Ngoan
Chief Executive Officer
Bank of Foreign Trade of Vietnam (Vietcombank)

FREE TRADE AND REGIONAL TRADE AGREEMENT CATALOG DEVELOPMENT, RESEARCH, AND ANALYSIS CONTRIBUTORS

The development, research and analysis work contained in this catalog is the work of MBA student researchers of the University of Southern California, Marshall School of Business, with the guidance of T. James Min II, Esq. of FedEx Express Legal Department, and Professors Dennis Schorr and Carl Voigt of University of Southern California, Marshall School of Business. The MBA student researchers expended a great amount of time and effort over almost a year to research, analyze, compile and review this work. The students who have contributed to this great work are listed below. Without their dedication, persistence and hard work, this catalog would not have been possible. The faculty of the University of Southern California, Marshall School of Business, particularly Carl Voigt and Dennis Schorr should be commended for their commitment to this project and for making their resources available to the students.

First Name	Last Name	Country of Citizenship	MBA Graduation Year
Linus	Ang	Philippines	2007
Ann	Chon Kim	USA	2007
Jamie	Cota	USA	2007
Regina	Firman	Indonesia	2007
Stephanie	Foote	USA	2007
Ying	Fu	China	2007
Rahul	Mitra	India	2007
Thomas	Morphopoulos	USA	2007
Stacey	Robbins	USA	2007
John	Shenk	USA	2008
Jeremy	Steele	USA	2007
Jorge	Tan	USA	2007
Jun	Weng	China	2007
Dr. Richard	Drobnick	USA	Faculty Advisor
Dr. K. Ravi	Kumar	USA	Faculty Advisor
Dr. Dennis	Schorr	USA	Faculty Advisor
Dr. Carl	Voigt	New Zealand	Faculty Advisor

Comparative Analysis of FTA/RTAs Among APEC Economies

WTO Basis of Comparison

1. **Transparency**
   a. Publication of Laws and Regulations pg. 2
   b. Availability of Judicial Appeal of Agency Decisions pg. 2
   c. Internet Availability of Laws and Regulations pg. 3
   d. Inclusion of Dispute Settlement Mechanism pg. 3

2. **Customs Procedures/Trade Facilitation**
   a. Clearance Time Benchmark pg. 25
   b. Risk Management Based Inspection pg. 25
   c. Electronic Data Interchange Requirement pg. 25

3. **Technical Standards**
   a. Electronic Products pg. 26
   b. Telecommunication Equipment pg. 26
   c. Sanitary & Phytosanitary Measures pg. 71
   d. Hazards & Safety Requirements pg. 26

4. **Intellectual Property Rights**
   a. Copyright Protection Provision pg. 59
   b. Trademark Protection Provision pg. 61
   c. Patent Protection Provision pg. 64
   d. Enforcement of IP Protection at Border pg. 68

5. **Market Access of Trade in Goods** pg. 71

6. **Market Access for Trade in Services**
   a. Financial Services (Banking) pg. 72
      i. Branching Requirements pg. 72
      ii. Licensing Requirements pg. 72
      iii. Regulatory Requirements pg. 72
      iv. Foreign Ownership Provision pg. 72

   b. Telecommunications Services
      i. Standards Requirements pg. 76
      ii. Interconnectivity Access pg. 76
      iii. Foreign Ownership Provision pg. 78

   c. Express Delivery Services
      i. Definition of Express Delivery Services pg. 80
      ii. Customs Clearance Provision pg. 80

   d. Movement of Labor pg. 81

TRANSPARENCY

Publication of Laws and Regulations (GATT 1947, Article X, 1 and 2)
Availability of Judicial Appeal (GATT 1947, Article X, 3b)

The General Agreement on Tariffs and Trade (GATT 1947)
Article X: Publication and Administration of Trade Regulations
http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#articleX

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published.

3. (*a*) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(*b*) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; *Provided* that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(*c*) The provisions of subparagraph (*b*) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this subparagraph.

TRANSPARENCY (continued)

Internet Availability of Laws and Regulations

(Not mentioned in WTO)

Inclusion of Dispute Settlement Mechanisms

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes
http://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm

Members hereby *agree* as follows:

Article 1:Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

Article 2: Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

3. The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.

4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.

Article 3: General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

4. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.

5. All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.

6. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.

7. Before bringing a case, a Member shall exercise its judgment as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures.

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

9. The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

10. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

11. This Understanding shall be applied only with respect to new requests for consultations under the consultation provisions of the covered agreements made on or after the date of entry into force of the WTO Agreement. With respect to disputes for which the request for consultations was made under GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply.

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

Article 4: Consultations

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be

submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

Article 5: Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

Article 6: Establishment of Panels

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.

2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

Article 7: Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

> "To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.

3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

Article 8: Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of

any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

3. Citizens of Members whose governments are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Article 9: Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

Article 10: Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.

4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

Article 11: Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Article 12: Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.

2. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

3. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 9 of Article 4, if relevant.

4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

5. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.

6. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

9. When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a

developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 8 and 9 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.

Article 13: Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

Article 14: Confidentiality

1. Panel deliberations shall be confidential.

2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

3. Opinions expressed in the panel report by individual panelists shall be anonymous.

Article 15: Interim Review Stage

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.

2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive

sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time-period set out in paragraph 8 of Article 12.

Article 16: Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.

2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.

4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

Article 17: Appellate Review

Standing Appellate Body

1. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available

at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

5. As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

12. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding.

13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

Article 18: Communications with the Panel or Appellate Body

1. There shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 19: Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement. In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20: Time-frame for DSB Decisions

Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

Article 21: Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

3. At a DSB meeting held within 30 days after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the

recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings. In such arbitration, a guideline for the arbitrator should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

6. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved. At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 22: Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, “sector” means:

(i) with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

(g) for purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

7. The arbitrator acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of

adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

Article 23: Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

Article 24: Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25: Arbitration

1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.

4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards.

Article 26

1. *Non-Violation Complaints of the Type Described in Paragraph 1(b) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

(a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;

(b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;

(c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means

of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;

(d) notwithstanding the provisions of paragraph 1 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

2. *Complaints of the Type Described in Paragraph 1(c) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(c) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been circulated to the Members. The dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:

(a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;

(b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27: Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

3. The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.

Appendix 1: Agreements Covered by the Understanding

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1A: Multilateral Agreements on Trade in Goods
Annex 1B: General Agreement on Trade in Services
Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4: Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

Appendix 2: Special or Additional Rules and Procedures Contained in the Covered Agreements

Agreement Rules and Procedures

Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

Appendix 3: Working Procedures

l. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.

2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.

3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a) Receipt of first written submissions of the parties:
(1) complaining Party: _____ 3-6 weeks
(2) Party complained

	against:	_____	2-3 weeks
(b)	Date, time and place of first substantive meeting with the parties; third party session:	_____	1-2 weeks
(c)	Receipt of written rebuttals of the parties:	_____	2-3 weeks
(d)	Date, time and place of second substantive meeting with the parties:	_____	1-2 weeks
(e)	Issuance of descriptive part of the report to the parties:	_____	2-4 weeks
(f)	Receipt of comments by the parties on the descriptive part of the report:	_____	2 weeks
(g)	Issuance of the interim report, including the findings and conclusions, to the parties:	_____	2-4 weeks
(h)	Deadline for party to request review of part(s) of report:	_____	1 week
(i)	Period of review by panel, including possible additional meeting with parties:	_____	2 weeks
(j)	Issuance of final report to parties to dispute:	_____	2 weeks
(k)	Circulation of the final report to the Members:	_____	3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

Appendix 4: Expert Review Groups

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.

4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

CUSTOMS PROCEDURES/TRADE FACILITATION

Clearance Time Benchmark

(Not mentioned in WTO)

Risk Management Based Inspection

(Not mentioned in WTO)

Electronic Data Interchange Requirement

(Not mentioned in WTO)

TECHNICAL STANDARDS

Electronic Products
Telecommunication Equipment
Hazards & Safety Requirements

Agreement on Technical Barriers to Trade

http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm

Members,

Having regard to the Uruguay Round of Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994;

Recognizing the important contribution that international standards and conformity assessment systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and conformity assessment systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Hereby *agree* as follows:

Article 1: General Provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by

international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

1.5 The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.

1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

Technical Regulations and Standards

Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

With respect to their central government bodies:

2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia:* national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia:* available scientific and technical information, related processing technology or intended end-uses of products.

2.3 Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.5 A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member, explain the justification

for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

2.7 Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations.

2.8 Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.10 Subject to the provisions in the lead-in to paragraph 9, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 9 as it finds necessary, provided that the Member, upon adoption of a technical regulation, shall:

2.10.1 notify immediately other Members through the Secretariat of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

2.10.2 upon request, provide other Members with copies of the technical regulation;

2.10.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.11 Members shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

2.12 Except in those urgent circumstances referred to in paragraph 10, Members shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.

Article 3: Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies

With respect to their local government and non-governmental bodies within their territories:

3.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Article 2, with the exception of the obligation to notify as referred to in paragraphs 9.2 and 10.1 of Article 2.

3.2 Members shall ensure that the technical regulations of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 9.2 and 10.1 of Article 2, noting that notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Member concerned.

3.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 9 and 10 of Article 2, to take place through the central government.

3.4 Members shall not take measures which require or encourage local government bodies or non-governmental bodies within their territories to act in a manner inconsistent with the provisions of Article 2.

3.5 Members are fully responsible under this Agreement for the observance of all provisions of Article 2. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Article 2 by other than central government bodies.

Article 4: Preparation, Adoption and Application of Standards

4.1 Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice.

4.2 Standardizing bodies that have accepted and are complying with the Code of Good Practice shall be acknowledged by the Members as complying with the principles of this Agreement.

Conformity with Technical Regulations and Standards

Article 5: Procedures for Assessment of Conformity by Central Government Bodies

5.1 Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:

5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;

5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, *inter alia*, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

5.2 When implementing the provisions of paragraph 1, Members shall ensure that:

5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic products;

5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;

5.2.4 the confidentiality of information about products originating in the territories of other Members arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;

5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Members are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking

into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;

5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;

5.2.7 whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;

5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

5.3 Nothing in paragraphs 1 and 2 shall prevent Members from carrying out reasonable spot checks within their territories.

5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.

5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Members, Members shall:

5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;

5.6.2 notify other Members through the Secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

5.6.3 upon request, provide to other Members particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;

5.6.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.7 Subject to the provisions in the lead-in to paragraph 6, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 6 as it finds necessary, provided that the Member, upon adoption of the procedure, shall:

5.7.1 notify immediately other Members through the Secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;

5.7.2 upon request, provide other Members with copies of the rules of the procedure;

5.7.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.8 Members shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

5.9 Except in those urgent circumstances referred to in paragraph 7, Members shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.

Article 6: Recognition of Conformity Assessment by Central Government Bodies

With respect to their central government bodies:

6.1 Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:

6.1.1 adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Member, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;

6.1.2 limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Member.

6.2 Members shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in paragraph 1.

6.3 Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each others conformity assessment procedures. Members may require that such agreements fulfil the criteria of paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

6.4 Members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.

Article 7: Procedures for Assessment of Conformity by Local Government Bodies

With respect to their local government bodies within their territories:

7.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Articles 5 and 6, with the exception of the obligation to notify as referred to in paragraphs 6.2 and 7.1 of Article 5.

7.2 Members shall ensure that the conformity assessment procedures of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 6.2 and 7.1 of Article 5, noting that notifications shall not be required for conformity assessment procedures the technical content of which is substantially the same as that of previously notified conformity assessment procedures of central government bodies of the Members concerned.

7.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 6 and 7 of Article 5, to take place through the central government.

7.4 Members shall not take measures which require or encourage local government bodies within their territories to act in a manner inconsistent with the provisions of Articles 5 and 6.

7.5 Members are fully responsible under this Agreement for the observance of all provisions of Articles 5 and 6. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Articles 5 and 6 by other than central government bodies.

Article 8: Procedures for Assessment of Conformity by Non-Governmental Bodies

8.1 Members shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

8.2 Members shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.

Article 9: International and Regional Systems

9.1 Where a positive assurance of conformity with a technical regulation or standard is required, Members shall, wherever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein.

9.2 Members shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment in which relevant bodies within their territories are members or participants comply with the provisions of Articles 5 and 6. In addition, Members shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.

9.3 Members shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.

Information and Assistance

Article 10: Information About Technical Regulations, Standards and Conformity Assessment Procedures

10.1 Each Member shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents regarding:

10.1.1 any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;

10.1.2 any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;

10.1.3 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional bodies of which such bodies are members or participants;

10.1.4 the membership and participation of the Member, or of relevant central or local government bodies within its territory, in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; it shall also be able to provide reasonable information on the provisions of such systems and arrangements;

10.1.5 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and

10.1.6 the location of the enquiry points mentioned in paragraph 3.

10.2 If, however, for legal or administrative reasons more than one enquiry point is established by a Member, that Member shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these enquiry points. In addition, that Member shall ensure that any enquiries addressed to an incorrect enquiry point shall promptly be conveyed to the correct enquiry point.

10.3 Each Member shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents or information as to where they can be obtained regarding:

10.3.1 any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and

10.3.2 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by non-governmental bodies, or by regional bodies of which such bodies are members or participants;

10.3.3 the membership and participation of relevant non-governmental bodies within its territory in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements.

10.4 Members shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Members or by interested parties in other Members, in accordance with the provisions of this Agreement, they are supplied at an equitable price (if any) which shall, apart from the real cost of delivery, be the same for the nationals(1)of the Member concerned or of any other Member.

10.5 Developed country Members shall, if requested by other Members, provide, in English, French or Spanish, translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.

10.6 The Secretariat shall, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Members and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Members to any notifications relating to products of particular interest to them.

10.7 Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement. Members concerned are encouraged to enter, upon request, into consultations with other Members for the purposes of concluding similar agreements or of arranging for their participation in such agreements.

10.8 Nothing in this Agreement shall be construed as requiring:

10.8.1 the publication of texts other than in the language of the Member;

10.8.2 the provision of particulars or copies of drafts other than in the language of the Member except as stated in paragraph 5; or

10.8.3 Members to furnish any information, the disclosure of which they consider contrary to their essential security interests.

10.9 Notifications to the Secretariat shall be in English, French or Spanish.

10.10 Members shall designate a single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures under this Agreement except those included in Annex 3.

10.11 If, however, for legal or administrative reasons the responsibility for notification procedures is divided among two or more central government authorities, the Member concerned shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these authorities.

Article 11: Technical Assistance to Other Members

11.1 Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.

11.2 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

11.3 Members shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

11.3.1 the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and

11.3.2 the methods by which their technical regulations can best be met.

11.4 Members shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member.

11.5 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Member receiving the request.

11.6 Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country

Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

11.7 Members shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Members, especially the developing country Members, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

11.8 In providing advice and technical assistance to other Members in terms of paragraphs 1 to 7, Members shall give priority to the needs of the least-developed country Members.

Article 12: Special and Differential Treatment of Developing Country Members

12.1 Members shall provide differential and more favourable treatment to developing country Members to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2 Members shall give particular attention to the provisions of this Agreement concerning developing country Members rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreements institutional arrangements.

12.3 Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.

12.4 Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

12.5 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing country Members.

12.6 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing country Members, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.

12.7 Members shall, in accordance with the provisions of Article 11, provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion

and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members.

12.8 It is recognized that developing country Members may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing country Members, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Members, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.

12.9 During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their efforts in this direction, developed country Members shall take account of the special needs of the former in regard to financing, trade and development.

12.10 The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels.

Institutions, Consultation And Dispute Settlement

Article 13: The Committee on Technical Barriers to Trade

13.1 A Committee on Technical Barriers to Trade is hereby established, and shall be composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year, for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Members.

13.2 The Committee shall establish working parties or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.

13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies. The Committee shall examine this problem with a view to minimizing such duplication.

Article 14: Consultation and Dispute Settlement

14.1 Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

14.2 At the request of a party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts.

14.3 Technical expert groups shall be governed by the procedures of Annex 2.

14.4 The dispute settlement provisions set out above can be invoked in cases where a Member considers that another Member has not achieved satisfactory results under Articles 3, 4, 7, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member.

Final Provisions

Article 15: Final Provisions

Reservations

15.1 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Review

15.2 Each Member shall, promptly after the date on which the WTO Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement. Any changes of such measures thereafter shall also be notified to the Committee.

15.3 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof.

15.4 Not later than the end of the third year from the date of entry into force of the WTO Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12. Having regard, *inter alia*, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods.

Annexes

15.5 The annexes to this Agreement constitute an integral part thereof.

Annex 1: Terms and their Definitions for the Purpose of this Agreement

The terms presented in the sixth edition of the ISO/IEC Guide 2: 1991, General Terms and Their Definitions Concerning Standardization and Related Activities, shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide taking into account that services are excluded from the coverage of this Agreement.

For the purpose of this Agreement, however, the following definitions shall apply:

1. *Technical regulation*

Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Explanatory note

The definition in ISO/IEC Guide 2 is not self-contained, but based on the so-called "building block" system.

2. *Standard*

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Explanatory note

The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This Agreement deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This Agreement covers also documents that are not based on consensus.

3. *Conformity assessment procedures*

Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

Explanatory note

Conformity assessment procedures include, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

4. *International body or system*

Body or system whose membership is open to the relevant bodies of at least all Members.

5. *Regional body or system*

Body or system whose membership is open to the relevant bodies of only some of the Members.

6. *Central government body*

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

Explanatory note:

In the case of the European Communities the provisions governing central government bodies apply. However, regional bodies or conformity assessment systems may be established within the European Communities, and in such cases would be subject to the provisions of this Agreement on regional bodies or conformity assessment systems.

7. *Local government body*

Government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

8. *Non-governmental body*

Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

Annex 2: Technical Expert Groups

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Technical expert groups are under the panels authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on a technical expert group. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

4. Technical expert groups may consult and seek information and technical advice from any source they deem appropriate. Before a technical expert group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by a technical expert group for such information as the technical expert group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The technical expert group shall submit a draft report to the Members concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be circulated to the Members concerned when it is submitted to the panel.

Annex 3: Code of Good Practice for the Preparation, Adoption and Application of Standards

General Provisions

A. For the purposes of this Code the definitions in Annex 1 of this Agreement shall apply.

B. This Code is open to acceptance by any standardizing body within the territory of a Member of the WTO, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Members of the WTO; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Member of the WTO (referred to in this Code collectively as "standardizing bodies" and individually as "the standardizing body").

C. Standardizing bodies that have accepted or withdrawn from this Code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

Annex 3: Substantive Provisions

D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favourable than that accorded to like products of national origin and to like products originating in any other country.

E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.

G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part, within the limits of its resources, in the preparation by relevant international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Member, participation in a particular international standardization activity shall,

whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

H. The standardizing body within the territory of a Member shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.

I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.

J. At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.

The work programme shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standards development, and the references of any international standards taken as a basis. No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva.

The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.

L. Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this Code of Good Practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this Code presented by standardizing bodies that have accepted this Code of Good Practice. It shall make an objective effort to solve any complaints.

CUSTOMS PROCEDURES/TRADE FACILITATION (continued)

Sanitary & Phytosanitary Measures

Agreement on the Application of Sanitary and Phytosanitary Measures

http://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm

Members,

Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade;

Desiring to improve the human health, animal health and phytosanitary situation in all Members;

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health;

Recognizing that developing country Members may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing Members, and as a consequence in access to markets, and also in the formulation and application of sanitary or phytosanitary measures in their own territories, and desiring to assist them in their endeavours in this regard;

Desiring therefore to elaborate rules for the application of the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b)[1];

[1] In this Agreement, reference to Article XX(b) includes also the chapeau of that Article.

Hereby agree as follows:

Article 1: General Provisions

1. This Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement.

2. For the purposes of this Agreement, the definitions provided in Annex A shall apply.

3. The annexes are an integral part of this Agreement.

4. Nothing in this Agreement shall affect the rights of Members under the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Agreement.

Article 2: Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Article 3: Harmonization

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.[2] Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

4. Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

5. The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Article 4: Equivalence

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

[2] For the purposes of paragraph 3 of Article 3, there is a scientific justification if, on the basis of an examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement, a Member determines that the relevant international standards, guidelines or recommendations are not sufficient to achieve its appropriate level of sanitary or phytosanitary protection.

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

Article 5: Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.[3]

[3] For purposes of paragraph 6 of Article 5, a measure is not more trade-restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure.

Article 6: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

2. Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

3. Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

Article 7: Transparency

Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

Article 8: Control, Inspection and Approval Procedures

Members shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this Agreement.

Article 9: Technical Assistance

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

Article 10: Special and Differential Treatment

1. In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.

2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

Article 11: Consultations and Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.

3. Nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

Article 12: Administration

1. A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonization. The Committee shall reach its decisions by consensus.

2. The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

3. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

4. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by Members of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a Member does not apply an international standard, guideline or recommendation as a

condition for import, the Member should provide an indication of the reason therefor, and, in particular, whether it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection. If a Member revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the Secretariat as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.

5. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations.

6. The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use given according to paragraph 4.

7. The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.

Article 13: Implementation

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

Article 14: Final Provisions

The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions

of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

ANNEX A: DEFINITIONS[4]

1. *Sanitary or phytosanitary measure* - Any measure applied:

   (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

   (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

   (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

   (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.

2. *Harmonization* - The establishment, recognition and application of common sanitary and phytosanitary measures by different Members.

3. *International standards, guidelines and recommendations*

   (a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;

[4] For the purpose of these definitions, "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticide and veterinary drug residues and extraneous matter.

(b) for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;

(c) for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organizations operating within the framework of the International Plant Protection Convention; and

(d) for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members, as identified by the Committee.

4. *Risk assessment* - The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.

5. *Appropriate level of sanitary or phytosanitary protection* - The level of protection deemed appropriate by the Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.

NOTE: Many Members otherwise refer to this concept as the "acceptable level of risk".

6. *Pest- or disease-free area* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.

NOTE: A pest- or disease-free area may surround, be surrounded by, or be adjacent to an area - whether within part of a country or in a geographic region which includes parts of or all of several countries -in which a specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

7. *Area of low pest or disease prevalence* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels and which is subject to effective surveillance, control or eradication measures.

ANNEX B: TRANSPARENCY OF SANITARY AND PHYTOSANITARY REGULATIONS

Publication of regulations

1. Members shall ensure that all sanitary and phytosanitary regulations[5] which have been adopted are published promptly in such a manner as to enable interested Members to become acquainted with them.

2. Except in urgent circumstances, Members shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member.

Enquiry points

3. Each Member shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:

(a) any sanitary or phytosanitary regulations adopted or proposed within its territory;

(b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;

(c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;

(d) the membership and participation of the Member, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement, and the texts of such agreements and arrangements.

4. Members shall ensure that where copies of documents are requested by interested Members, they are supplied at the same price (if any), apart from the cost of delivery, as to the nationals[6] of the Member concerned.

Notification procedures

5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:

[5] Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally.

[6] When "nationals" are referred to in this Agreement, the term shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

(a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;

(b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;

(c) provide upon request to other Members copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;

(d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

6. However, where urgent problems of health protection arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 5 of this Annex as it finds necessary, provided that the Member:

(a) immediately notifies other Members, through the Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);

(b) provides, upon request, copies of the regulation to other Members;

(c) allows other Members to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.

7. Notifications to the Secretariat shall be in English, French or Spanish.

8. Developed country Members shall, if requested by other Members, provide copies of the documents or, in case of voluminous documents, summaries of the documents covered by a specific notification in English, French or Spanish.

9. The Secretariat shall promptly circulate copies of the notification to all Members and interested international organizations and draw the attention of developing country Members to any notifications relating to products of particular interest to them.

10. Members shall designate a single central government authority as responsible for the implementation, on the national level, of the provisions concerning notification procedures according to paragraphs 5, 6, 7 and 8 of this Annex.

General reservations

11. Nothing in this Agreement shall be construed as requiring:

(a) the provision of particulars or copies of drafts or the publication of texts other than in the language of the Member except as stated in paragraph 8 of this Annex; or

(b) Members to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

ANNEX C: CONTROL, INSPECTION AND APPROVAL PROCEDURES[7]

1. Members shall ensure, with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, that:

(a) such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;

(b) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and that upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(c) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs;

(d) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;

(e) any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;

[7] Control, inspection and approval procedures include, *inter alia*, procedures for sampling, testing and certification.

(f) any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service;

(g) the same criteria should be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;

(h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned; and

(i) a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.

Where an importing Member operates a system for the approval of the use of food additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs which prohibits or restricts access to its domestic markets for products based on the absence of an approval, the importing Member shall consider the use of a relevant international standard as the basis for access until a final determination is made.

2. Where a sanitary or phytosanitary measure specifies control at the level of production, the Member in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.

3. Nothing in this Agreement shall prevent Members from carrying out reasonable inspection within their own territories.

INTELLECTUAL PROPERTY RIGHTS

Copyright Protection Provision (TRIPS, Part II, Section 1: Copyright and Related Rights)

Trade-Related Aspects of Intellectual Property Rights
Section 1: Copyright and Related Rights
http://www.wto.org/english/docs_e/legal_e/27-trips_04_e.htm#1

Article 9
Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10
Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11
Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12
Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13
Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14
Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

INTELLECTUAL PROPERTY RIGHTS (continued)

Trademark Protection Provision (TRIPS, Part II, Section 2: Trademarks)

Trade-Related Aspects of Intellectual Property Rights
Section 2: Trademarks
http://www.wto.org/english/docs_e/legal_e/27-trips_04_e.htm#2

Article 15
Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16
Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17
Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18
Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19
Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20
Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21
Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a

registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

INTELLECTUAL PROPERTY RIGHTS (continued)

Patent Protection Provision (TRIPS, Part II, Section 5: Patents)

Trade-Related Aspects of Intellectual Property Rights
Section 5: Patents

http://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm#5

Article 27
Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. (5) Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28
Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing (6) for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29
Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30
Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31
Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use (7) of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32
Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33
Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.

Article 34
Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

INTELLECTUAL PROPERTY RIGHTS (continued)

Enforcement of IP Protection at Border (TRIPS, Part III, Section 4: Special Requirements Related to Border Measures)

Trade-Related Aspects of Intellectual Property Rights
Section 4: Special Requirements Related to Border Measures
http://www.wto.org/english/docs_e/legal_e/27-trips_05_e.htm#4

Article 51
Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52
Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53
Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54
Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55
Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56
Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57
Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58
Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59
Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60
De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

MARKET ACCESS FOR TRADE IN GOODS

Please reference “MFG Goods” tab of FTA Matrix EXCEL Workbook.

MARKET ACCESS FOR TRADE IN SERVICES
Financial Services (Banking)
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provision

Understanding on Commitments in Financial Services

http://www.wto.org/english/docs_e/legal_e/54-ufins_e.htm

1. Scope and Definition

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, “services supplied in the exercise of governmental authority” means the following:

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b) (ii) or (b) (iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. Domestic Regulation

(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. Recognition

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be

achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a) , whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

4. Dispute Settlement

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. Definitions

For the purposes of this Annex:

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance) . Financial services include the following activities:

Insurance and insurance-related services

(i) Direct insurance (including co-insurance) :

(A) life

(B) non-life

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds from the public;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) Guarantees and commitments;

(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits) ;

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion.

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money broking;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv) , including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) “Public entity” means:

(i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

Second annex on Financial Services

1. Notwithstanding Article II of the Agreement and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the Agreement.

2. Notwithstanding Article XXI of the Agreement, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its Schedule.

3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.

TELECOMMUNICATIONS

Standards Requirements (GATS, Annex on Telecommunications, #5)
Interconnectivity Access (GATS, Annex on Telecommunications, #5)

Annex 1B: General Agreement on Trade in Services (GATS)
Article XXIX: Annexes
Annex on Telecommunications
http://www.wto.org/english/docs_e/legal_e/26-gats_02_e.htm#articleXXIX

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).(**15**)

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

(i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;

(ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and

(iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

(i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;

(ii) to protect the technical integrity of public telecommunications transport networks or services; or

(iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

(i) restrictions on resale or shared use of such services;

(ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;

(iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7(a);

(iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;

(v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

(vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

TELECOMMUNICATIONS (continued)

Foreign Ownership Provision (GATS, Part III, Article XVI, XVII)

Annex 1B: General Agreement on Trade in Services (GATS)
Part III: Specific Commitments
http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleXVI

Article XVI: Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article XVII: National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

Article XVIII: Additional Commitments

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

Country Specific WTO Schedule of Commitments

http://tsdb.wto.org/wto/WTOHomepublic.htm

EXPRESS DELIVERY SERVICES

Definition of Express Delivery Services
Customs Clearance Provision

No official WTO agreement specifically for express delivery services. As of 12 September 2006, there a proposal was made for new negotiations.

Proposal: http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm

MOVEMENT OF LABOR

Annex 1B: General Agreement on Trade in Services (GATS)

Article XXIX: Annexes

Annex on Movement of Natural Persons Supplying Services Under the Agreement

http://www.wto.org/english/docs_e/legal_e/26-gats_02_e.htm#articleXXIX

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.

2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	15-Feb-2003	4-Aug-2005	17-Sep-2004	13-Jan-2002
	Korea-Chile	Korea-Singapore	Japan-Mexico	Japan-Singapore
Transparency				
Publication of Laws and Regulations	Article 17.3	Article 19.2	Chapter 16, Article 160/Annex 1	Chapter 1, Article 2
Availability of Judicial Appeal	Article 17.7	Article 19.5	Chapter 16, Article 163	Chapter 2 Article 18, #7
Internet Availability of Laws and Regulations	Chapter 17, Article 17.4 #4	Chapter 5.13 e		
Inclusion of Dispute Settlement Mechanisms	Chapter 19	Chapter 20	Chapter 15	Chapter 21, Article 82 & Annex Vc
Customs Procedures / Trade Facilitation				
Clearance Time Benchmark	Explicit Exclusion	Chapter 5, Article 5.10.2	Chapter 5, Article 50	Chapter 4
Risk Management Based Inspection	Explicit Exclusion	Chapter 5, Article 5.13		
Electronic Data Interchange Requirement	Explicit Exclusion	Chapter 5, Article 5.13	Chapter 5, Article 50	Chapter 5
Technical Standards				
Electronic Products	Article 9.2, 9.5.2, 9.5.3, 9.6.6	Chapter 8	Chapter 3, Section 3, Articles 16	Chapter 6
Telecommunication Equipment	Chapter 9, Chapter 12, Article	Chapter 8, Article 8.4	Chapter 3, Section 3, Articles 16	Annex III
Sanitary & Phytosanitary Measures	Chapter 8, Article 8.10, 8.11	Chapter 7	Chapter 3, Section 2, Articles 12	- 15
Hazards & Safety Requirements	Chapter 9, Article 9.5.1	Chapter 8	Chapter 3	Chapter 6
Intellectual Property Rights				
Copyright Protection Provision	Part V, Chapter 16	Article 17.2	Article 73	Chapter 10
Trademark Protection Provision	Part V, Chapter 16	Article 17.2	Article 73	Chapter 10, Article 98
Patent Protection Provision	Part V, Chapter 16	Article 17.2 & 17.7	Article 73	Chapter 10
Enforcement of IP Protection at Border	Part V, Chapter 16	Article 17.2	Article 73	
Market Access for Trade In Goods				
Agricultural Market Access				
Sugar	Article 3.4 and Annex 3.4	Article 3.3, 3.4, and Annex 3A	Article 5.3.a.i and Annex 1	Article 14 and Annex 1
Rice	Article 3.4 and Annex 3.4	Article 3.3, 3.4, and Annex 3A	Article 5.3.a.i and Annex 1	Article 14 and Annex 1
Poultry	Article 3.4 and Annex 3.4	Article 3.3, 3.4, and Annex 3A	Article 5.3.a.i and Annex 1	Article 14 and Annex 1
Beef	Article 3.4 and Annex 3.4	Article 3.3, 3.4, and Annex 3A	Article 5.3.a.i and Annex 1	Article 14 and Annex 1
Manufactured Goods Market Access				
Food and Beverages				

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	15-Feb-2003	4-Aug-2005	17-Sep-2004	13-Jan-2002
	Korea-Chile	Korea-Singapore	Japan-Mexico	Japan-Singapore
Chemical Products	Annex 3.4, Section B, C	Annex 3A	Annex 1	Annex 1
Pharmaceutical Products				
Plastic Articles				
Textiles and Clothing				
Metal Products				
Mechanical, Electrical, and Electronic Products				
Market Access for Trade In Services				
Financial Services - Banking				
Branching Requirements	Article 21.5	Annex 12a	Chapter 9 Article 108	Chapter 7 Article 58.6.d.ii
Licensing Requirements	Article 21.5	Annex 12a	Chapter 9 Article 108	
Regulatory Requirements	Article 21.5	Annex 12a	Chapter 9 Article 108	Chapter 13 Article 107
Foreign Ownership Provisions	Article 21.5	Annex 12a	Chapter 9 Article 108	
Telecommunications Services				
Standards Requirements	Chapter 12, Article 12.5	Chapter 11		Annex IVB
Interconnectivity Access	Chapter 12, Article 12.3	Chapter 11, Article 11.4		Annex IVB
Foreign Ownership Provisions	Annex I, II	Annex 9A, 9B	Annex 6	Annex IVC
Express Delivery Services				
Definition of Express Delivery Services				Annex IVC, pg. 445
Customs Clearance Provision				
Movement of Labor	Chapter 13	Chapter 13	Chapter 10 and Annex 10	Chapter 9 and Annex VI

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	**29-Jun-2003**	**7-Oct-2003**	**18-Jul-2005**	**6-May-2003**
	China-Hong Kong	ASEAN	Trans Pacific SEP	US-Singapore
Transparency				
Publication of Laws and Regulations	Annex 6, Article 7 and	ASEAN Protocol on	Article 14.2	Articles 19.3
Availability of Judicial Appeal		ASEAN Protocol on	Article 14.4	Article 19.6
Internet Availability of Laws and Regulations			Article 14.2, Footnote	Article 4.1
Inclusion of Dispute Settlement Mechanisms		ASEAN Protocol on	Chapter 15	Chapter 20
Customs Procedures / Trade Facilitation				
Clearance Time Benchmark	Chapter5, Article 17, A	Customs	Chapter 5	Chapter 4, Article 4.8
Risk Management Based Inspection			Chapter 5, Article 5.13	Chapter 4, Article 4.9
Electronic Data Interchange Requirement	Chapter 3, Article 10.2	Customs	Chapter 5, Article 5.10	
Technical Standards				
Electronic Products	Annex 6, 5.2.4	Agreement on the AS	Article 8.5, 8.11	Chapter 6
Telecommunication Equipment		ASEAN Sectoral Arr	Article 8.5, 8.11	Chapter 6, Article 6.3.1
Sanitary & Phytosanitary Measures	Annex 6, 5.2.2		Chapter 7	Preamble, Chapter 1, Article 1.1.2
Hazards & Safety Requirements	Annex 6, 5.2	Article 9, ACTD	Chapter 8, Article 8.3.4,	Chapter 6
Intellectual Property Rights				
Copyright Protection Provision	Supplement III, Item 1	ASEAN Framework A	Article 10.3	Article 16.4
Trademark Protection Provision	Supplement III, Item 1	ASEAN Framework A	Articles 10.3 & 10.4	Articles 16.2 & 16.3
Patent Protection Provision	Supplement III, Item 1	ASEAN Framework A	Article 10.3	Articles 16.7 & 16.8
Enforcement of IP Protection at Border	Supplement III, Item 1	ASEAN Framework A	Article 10.3	Article 16.9, #16-20
Market Access for Trade In Goods				
Agricultural Market Access				
Sugar	Annex 1 and Table 1	AFTA Tariff Databas	Article 3.4	Article 2.2 and Annexes 2B and 2C
Rice	Annex 1 and Table 1	AFTA Tariff Databas	Article 3.4	Article 2.2 and Annexes 2B and 2C
Poultry	Annex 1 and Table 1	AFTA Tariff Databas	Article 3.4	Article 2.2 and Annexes 2B and 2C
Beef	Annex 1 and Table 1	AFTA Tariff Databas	Article 3.4	Article 2.2 and Annexes 2B and 2C
Manufactured Goods Market Access				
Food and Beverages				

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	29-Jun-2003	7-Oct-2003	18-Jul-2005	6-May-2003
	China-Hong Kong	ASEAN	Trans Pacific SEP	US-Singapore
Chemical Products	Annex 1 and Table 1	AFTA Tariff Database	Annex I	Annexes 2B, 2C
Pharmaceutical Products				
Plastic Articles				
Textiles and Clothing				
Metal Products				
Mechanical, Electrical, and Electronic Products				
Market Access for Trade In Services				
Financial Services - Banking				
Branching Requirements	Article 13.1	Agreement of Financ	Article 20.2	Article 10.4
Licensing Requirements		Schedule of Specific	Article 20.2	Article 10.4
Regulatory Requirements	Article 13.5		Article 20.2	Article 10.10.4
Foreign Ownership Provisions	Article 13.2	Schedule of Specific	Article 20.2	Article 10.4
Telecommunications Services				
Standards Requirements				Chapter 9
Interconnectivity Access				Chapter 9, Article 9.4
Foreign Ownership Provisions	Annex 4	Schedule of Specific	Annex III, IV	Annex 8B
Express Delivery Services				
Definition of Express Delivery Services			Annex III, pg. III-SG-27	Annex 8A, 8B
Customs Clearance Provision			Article 5.11	Article 4.10
Movement of Labor			Chapter 13 and Article 12.3	Chapter 11

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing	17-Feb-2003	14-Nov-2000	5-Jul-2004	19-Apr-2005
	Australia-Singapore	NZ-Singapore	Australia-Thailand	NZ-Thailand
Transparency				
Publication of Laws and Regulations	Chapter 2, Article 10	Part 11, Article 69	Article 1402	Article 14.1
Availability of Judicial Appeal	Chapter 2, Article 10		Articles 1405	Article 14.3
Internet Availability of Laws and Regulations			Article 1402, #3	Article 3.14
Inclusion of Dispute Settlement Mechanisms	Chapter 16	Part 10	Chapter 18	Chapter 17
Customs Procedures / Trade Facilitation				
Clearance Time Benchmark	Chapter 4 Article 3.2	Part 4. Article 10 & 11	Article 302	Ch 3 Article 3.5
Risk Management Based Inspection	Chapter 4 Article 5	Part 4. Article 13	Article 310	Chapter 3 Article 3.13
Electronic Data Interchange Requirement	Section 4 Article 4	Part 4. Article 12	Article 309	Chapter 3 Article 3.12
Technical Standards				
Electronic Products	Chapter 5, Article 3	Part 7, Article 39, 43	Chapter 7, Article 703, 704	Chapter 7, Article 7.3, 7.4
Telecommunication Equipment	Chapter 5, Article 3	Part 7, Article 39	Chapter 7, Article 703, 704	Article 7.3.3, 7.6.1
Sanitary & Phytosanitary Measures	Chapter 5, Chapter 5 Sectoral Annexe	Part 7, Article 39, 43	Chapter 6, Article 603	Chapter 6, Article 6.7
Hazards & Safety Requirements	Chapter 5, Article 2.2 b	Part 7, Article 44.b,c; 43.	Chapter 7, Article 703.1,70	Article 7.3.4;7.3.5
Intellectual Property Rights				
Copyright Protection Provision	Chapter 13	Part 9, Article 57	Chapter 13	Chapter 12
Trademark Protection Provision	Chapter 13	Part 9, Article 57	Chapter 13	Chapter 12
Patent Protection Provision	Chapter 13	Part 9, Article 57	Chapter 13	Chapter 12
Enforcement of IP Protection at Border	Chapter 13	Part 9, Article 57	Chapter 13	Chapter 12
Market Access for Trade In Goods				
Agricultural Market Access				
Sugar	02 Trade in Goods, Article 2	Part 3, Article 4	Articles 202-203	Chapter 2.2-2.3 and Annex 1
Rice	02 Trade in Goods, Article 2	Part 3, Article 4	Articles 202-203	Chapter 2.2-2.3 and Annex 1
Poultry	02 Trade in Goods, Article 2	Part 3, Article 4	Articles 202-203	Chapter 2.2-2.3 and Annex 1
Beef	02 Trade in Goods, Article 2	Part 3, Article 4	Articles 202-203	Chapter 2.2-2.3 and Annex 1
Manufactured Goods Market Access				
Food and Beverages				

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	17-Feb-2003	14-Nov-2000	5-Jul-2004	19-Apr-2005
	Australia-Singapore	NZ-Singapore	Australia-Thailand	NZ-Thailand
Chemical Products	Chapter 2, Article 3	Part 3, Article 4	Article 203	Thailand: Annex 1.1 NZ: Annex 1.2
Pharmaceutical Products				
Plastic Articles				
Textiles and Clothing				
Metal Products				
Mechanical, Electrical, and Electronic Products				
Market Access for Trade In Services				
Financial Services - Banking				
Branching Requirements	Chapter 9	Annex II: Financial Services		Chapter 9
Licensing Requirements	Chapter 9	Annex II: Financial Services		Chapter 9
Regulatory Requirements	Chapter 9 Article 3	Annex II: Financial Services		Chapter 9
Foreign Ownership Provisions	Chapter 9	Annex II: Financial Services		Chapter 9
Telecommunications Services				
Standards Requirements	Chapter 10		Chapter 8, Articles 807, 81	Chapter 8, Article 8.1
Interconnectivity Access	Chapter 10, Article 10.9		Chapter 8, Articles 807, 81	Chapter 8, Article 8.1
Foreign Ownership Provisions	Annex 4-II(B)	Annex 2.1	Annexes on Service and In	Chapter 8, Article 8.1, Annex 4.2
Express Delivery Services				
Definition of Express Delivery Services	Annex 4-I(B), pg. 4-I(B)-49	Annex 2.2, pg. 114		
Customs Clearance Provision				
Movement of Labor	Chapter 11	Article 72	Chapter 10	Article 8.1, #4 and Exchange of Letters

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	1-Jan-1983	18-May-2004	21-Feb-1991	1-Jan-1994
	Australia-NZ	Australia-US	PNG-Australia	NAFTA
Transparency				
Publication of Laws and Regulations		Ch 20.2		Article 1802
Availability of Judicial Appeal		Article 20.5		Article 1805
Internet Availability of Laws and Regulations				
Inclusion of Dispute Settlement Mechanisms	Article 22	Article 21, Section B		Chapter 19, Chapter 20, Articles B & C
Customs Procedures / Trade Facilitation				
Clearance Time Benchmark		Article 6.2.2	Article 7	
Risk Management Based Inspection		Article 6.5.9	Article 7	
Electronic Data Interchange Requirement		Article 6.10.b	Article 7	
Technical Standards				
Electronic Products	Point 1	Chapter 8, Article 8.7		Article 103, article 908
Telecommunication Equipment	Point 1	Chapter 8, Article 8.7		Annex 9.13.5.a-2, Chapter 13, Article 1304
Sanitary & Phytosanitary Measures	Article 18.(c)	Chapter 7 and Annex 7-A	Article 8(f),(g)	Chapter 7, Section B
Hazards & Safety Requirements	Point 3	Article 1.1.2, 8.2		Article 103, 904.1, 904.2, 906.1, 906.2
Intellectual Property Rights				
Copyright Protection Provision	Article 18 (d)	Articles 17.4	Article 8 (k)	Part 6, Articles 1705 -1707
Trademark Protection Provision	Article 18 (d)	Articles 17.2 & 17.3		Part 6, Article 1708
Patent Protection Provision	Article 18 (d)	Articles 17.9 & 17.10	Article 8 (k)	Part 6, Articles 1709
Enforcement of IP Protection at Border	Article 18 (d)	Article 17.11		Part 6, Article 1718
Market Access for Trade In Goods				
Agricultural Market Access				
Sugar	Article 4	Article 2.2, 2.3, and Annex 2B	Article 3	Article 301, 302, and Annex 302.2
Rice	Article 4	Article 2.2, 2.3, and Annex 2B	Article 3	Article 301, 302, and Annex 302.2
Poultry	Article 4	Article 2.2, 2.3, and Annex 2B	Article 3	Article 301, 302, and Annex 302.2
Beef	Article 4	Article 2.2, 2.3, and Annex 2B	Article 3	Article 301, 302, and Annex 302.2
Manufactured Goods Market Access				
Food and Beverages				

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	**1-Jan-1983**	**18-May-2004**	**21-Feb-1991**	**1-Jan-1994**
	Australia-NZ	Australia-US	PNG-Australia	NAFTA
Chemical Products	Article 4	US: Ch 2 Annex 2A Aus: Ch 2 Annex 2B Pharmaceutical Chapter 2 Annex 2C	Schedule A-D	Part 2 Chapter 3
Pharmaceutical Products				
Plastic Articles				
Textiles and Clothing				
Metal Products				
Mechanical, Electrical, and Electronic Products				
Market Access for Trade In Services				
Financial Services - Banking				
Branching Requirements	Principal Rules	Article 13.4		Part 5: Chapter 14
Licensing Requirements	Principal Rules	Article 13.6		Part 5: Chapter 14
Regulatory Requirements	Principal Rules	Article 13.11		Part 5: Chapter 14
Foreign Ownership Provisions	Principal Rules	Article 13.2		Part 5: Chapter 14
Telecommunications Services				
Standards Requirements		Chapter 12		Chapter 13, Article 1304
Interconnectivity Access		Chapter 12, Articles 12.10-14,12.22		Chapter 13, Article 1302
Foreign Ownership Provisions	Protocol on Trade In	Chapter 10, Side letter to Chapter 12		Chapter 12, Annex 1, 2
Express Delivery Services				
Definition of Express Delivery Services		Article 10.12		
Customs Clearance Provision		Article 6.10		
Movement of Labor				Chapter 16

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	6-Jun-2003	5-Dec-1996	1-Aug-1999	22-Jun-1998	29-Jan-1995
	US-Chile	Canada-Chile	Mexico-Chile	Peru-Chile	Peru-Mexico
Transparency					
Publication of Laws and Regulations	Article 20.2	Part 4 Chapter L-02	Articulo 16-03	Capitulo VI	
Availability of Judicial Appeal	Article 20.5	Part 4 Chapter L-05	Capitulo 18	Articulo 17	
Internet Availability of Laws and Regulations	Ch 5.1				
Inclusion of Dispute Settlement Mechanisms	Chapter 22	Part 4, Chapter N	Capitulo 18	Capitulo XVI, Anexo 8	
Customs Procedures / Trade Facilitation					
Clearance Time Benchmark	Chapter 5.2	Chapter E.06			
Risk Management Based Inspection	Chapter 5.4			Anexo No. 4	
Electronic Data Interchange Requirement	Chapter 5.3				
Technical Standards					
Electronic Products	Chapter 7, Article 7.7	Chapter A, Articles A	Capitulo 8	Capitulo XI, Annex 7	
Telecommunication Equipment	Chapter 7, Article 7.7	Article I-04	Capitulo 8-11	Capitulo XI, Annex 7.12	
Sanitary & Phytosanitary Measures	Chapter 6, Article 6.3	Chapter A, Articles A	Capitulo 7	Capitulo X	
Hazards & Safety Requirements	Chapter 6, Article 6.2	Chapter A, Articles A	Articulo 8-02	Capitulo XI	
Intellectual Property Rights					
Copyright Protection Provision	Article 17.5	Article A 03.1	Articulo 15-09 to 15-1	Articulo 36	
Trademark Protection Provision	Articles 17.2 & 17.3	Article A 03.1	Articulo 15-15 to 15-2	Articulo 36	
Patent Protection Provision	Articles 17.9 & 17.10	Article A 03.1	Articulo 15-03	Articulo 36	
Enforcement of IP Protection at Border	Article 17.11, Section	Article A 03.1	Articulo 15-36 to 15-4	Articulo 36	
Market Access for Trade In Goods					
Agricultural Market Access					
Sugar	Article 3.2, 3.3, and A	Article C-01, C-02, a	Article 3-03, 3-04	Capitulo II and Anexo 1	Articulo 3 and Anexos I, II
Rice	Article 3.2, 3.3, and A	Article C-01, C-02, a	Article 3-03, 3-04	Capitulo II and Anexo 1	Articulo 3 and Anexos I, II
Poultry	Article 3.2, 3.3, and A	Article C-01, C-02, a	Article 3-03, 3-04	Capitulo II and Anexo 1	Articulo 3 and Anexos I, II
Beef	Article 3.2, 3.3, and A	Article C-01, C-02, a	Article 3-03, 3-04	Capitulo II and Anexo 1	Articulo 3 and Anexos I, II
Manufactured Goods Market Access					
Food and Beverages			Part 2 Chapter 3		

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	6-Jun-2003 US-Chile	5-Dec-1996 Canada-Chile	1-Aug-1999 Mexico-Chile	22-Jun-1998 Peru-Chile	29-Jan-1995 Peru-Mexico
Chemical Products	US: Annex 3.3	Part 2 Chapter C	Part 2 Chapter 3	Chapter 2	Chapter 7
Pharmaceutical Products					
Plastic Articles					
Textiles and Clothing	Chile: Annex 3.3				
Metal Products					
Mechanical, Electrical, and Electronic Products	see above				
Market Access for Trade In Services					
Financial Services - Banking					
Branching Requirements	Article 12.4	Chapter H	Capitulo 9.3	Capitulo IX	Capitulo XI
Licensing Requirements	Article 12.16	Chapter H	Capitulo 9.3	Capitulo IX	Capitulo XI
Regulatory Requirements	12.11 (transparency),	Chapter H	Capitulo 9.3	Capitulo IX	Capitulo XI
Foreign Ownership Provisions	Article 12.4	Chapter H	Capitulo 9.3	Capitulo IX	Capitulo XI
Telecommunications Services					
Standards Requirements	Chapter 13	Article I-04	Articulo 12-09		
Interconnectivity Access	Chapter 13, Article 1	Article I-02, Annex II	Articulo 12-03		
Foreign Ownership Provisions	Chapter 11, Annex I,	Annex II	Articulo 10-03, 10-04		
Express Delivery Services					
Definition of Express Delivery Services	Annex 11.6			Capitulo XIII	
Customs Clearance Provision	Article 5.7			Capitulo XIII	
Movement of Labor	Chapter 14	Chapter K	Capitulo 13		

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing	2-Dec-2004 China-ASEAN	18-Nov-2005 China-Chile
Transparency		
Publication of Laws and Regulations	Article 4	Article 73
Availability of Judicial Appeal	Article 4	Article 76
Internet Availability of Laws and Regulations		Article 74, #4
Inclusion of Dispute Settlement Mechanisms	Article 21	Chapter 10
Customs Procedures / Trade Facilitation		
Clearance Time Benchmark		
Risk Management Based Inspection		
Electronic Data Interchange Requirement		Annex 6.1-4
Technical Standards		Ch 8, Article 68
Electronic Products		
Telecommunication Equipment		
Sanitary & Phytosanitary Measures		
Hazards & Safety Requirements		
Intellectual Property Rights		
Copyright Protection Provision	Article 7	Article 111
Trademark Protection Provision	Article 7	Article 111
Patent Protection Provision	Article 7	Article 111
Enforcement of IP Protection at Border	Article 7	Article 11
Market Access for Trade In Goods		
Agricultural Market Access		
Sugar	Annex I, II	Annex 1 Section 1
Rice	Annex I, II	Annex 1 Section 1
Poultry	Annex I, II	Annex 1 Section 1
Beef	Annex I, II	Annex 1 Section 1
Manufactured Goods Market Access		
Food and Beverages	Article 17	

Legend:
No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

Date of Signing	**2-Dec-2004**	**18-Nov-2005**
	China-ASEAN	China-Chile
Chemical Products		Annex 1 Section 1
Pharmaceutical Products		
Plastic Articles	Article 17	
Textiles and Clothing		
Metal Products		
Mechanical, Electrical, and Electronic Products		
Market Access for Trade In Services		
Financial Services - Banking		
Branching Requirements		
Licensing Requirements		
Regulatory Requirements		
Foreign Ownership Provisions		
Telecommunications Services		
Standards Requirements		
Interconnectivity Access		
Foreign Ownership Provisions		
Express Delivery Services		
Definition of Express Delivery Services		
Customs Clearance Provision		
Movement of Labor		

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products
Pharmaceutical Products
Plastic Articles
Textiles and Clothing
Metal Products
Mechanical, Electrical, and Electronic Products
Market Access for Trade In Services
Financial Services - Banking
Branching Requirements
Licensing Requirements
Regulatory Requirements
Foreign Ownership Provisions
Telecommunications Services
Standards Requirements
Interconnectivity Access
Foreign Ownership Provisions
Express Delivery Services
Definition of Express Delivery Services
Customs Clearance Provision
Movement of Labor

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Transparency
Publication of Laws and Regulations
Availability of Judicial Appeal
Internet Availability of Laws and Regulations
Inclusion of Dispute Settlement Mechanisms
Customs Procedures / Trade Facilitation
Clearance Time Benchmark
Risk Management Based Inspection
Electronic Data Interchange Requirement
Technical Standards
Electronic Products
Telecommunication Equipment
Sanitary & Phytosanitary Measures
Hazards & Safety Requirements
Intellectual Property Rights
Copyright Protection Provision
Trademark Protection Provision
Patent Protection Provision
Enforcement of IP Protection at Border
Market Access for Trade In Goods
Agricultural Market Access
Sugar
Rice
Poultry
Beef
Manufactured Goods Market Access
Food and Beverages

Legend:	
No Provision: Explicit Exclusion	
No Provision: No Mention	
Provision Exists (non-WTO)	
WTO Consistent Provision	
WTO Plus Provision	
WTO Different Provision	

Date of Signing

Chemical Products	
Pharmaceutical Products	
Plastic Articles	
Textiles and Clothing	
Metal Products	
Mechanical, Electrical, and Electronic Products	
Market Access for Trade In Services	
Financial Services - Banking	
Branching Requirements	
Licensing Requirements	
Regulatory Requirements	
Foreign Ownership Provisions	
Telecommunications Services	
Standards Requirements	
Interconnectivity Access	
Foreign Ownership Provisions	
Express Delivery Services	
Definition of Express Delivery Services	
Customs Clearance Provision	
Movement of Labor	

Legend

General Rules of Origin (non-textile)		Textile Rules of Origin
Tariff Change		Fiber Forward
Ad Valorem		Yarn Forward
Substantial Transformation		Fabric Forward
Mixed		Mixed
		No Textile ROO stated

FTA	General Rules of Origin (non-textile)		Textile Addendum
Korea-Chile	Chapter 4, Article 4.2		Annex 4, Chapters 50 -63
Korea-Singapore	Chapter 4m Article 4.2 (Annexes 4A, 4B, & 4C)		Annex 4A, Section XI
Japan-Mexico	Chapter 4, Article 22		Annex 4, Chapters 50 - 63
Japan-Singapore	Chapter 3, Article 23		Annex IIA, Chapters 50 - 63
China-HK	Annex 2.2		Annex 2, Table 1 #58-#144
ASEAN	CEPT-AFTA ROO		CEPT-AFTA Texitiles
Trans Pacific SEP	Chapter 4		Annex II, Section XI Chapters 50 -63
US-Singapore	Annex 3A		Annex 3A, Chapters 50 -63
Australia-Singapore	Article 3.c.		
NZ-Singapore	General VA		ROO pg. 12
Australia-Thailand	Article 402.3.a		Annex G
NZ-Thailand	ROO summary		
Australia-NZ	Article 3.1.c.ii		
Australia-US	Article 5.2		Annex 4A
PNG-Australia	Article 4.1.C.		Annex A
NAFTA	Chapter 4 & Annex 401		Annex 401, section XI
US-Chile	Chapter 4 & Annex 4.1		Annex 4.1, Section XI
Canada-Chile	Article D-02		Annex C-00-B
Mexico-Chile	Comercio de Bienes		Seccion XI, Capitulo 50-53
Peru-Chile	Article 3.7-8		
Peru-Mexico	Capitulo IV		
Peru-USA	Chapter 4 & Annex 4.1		Page 2

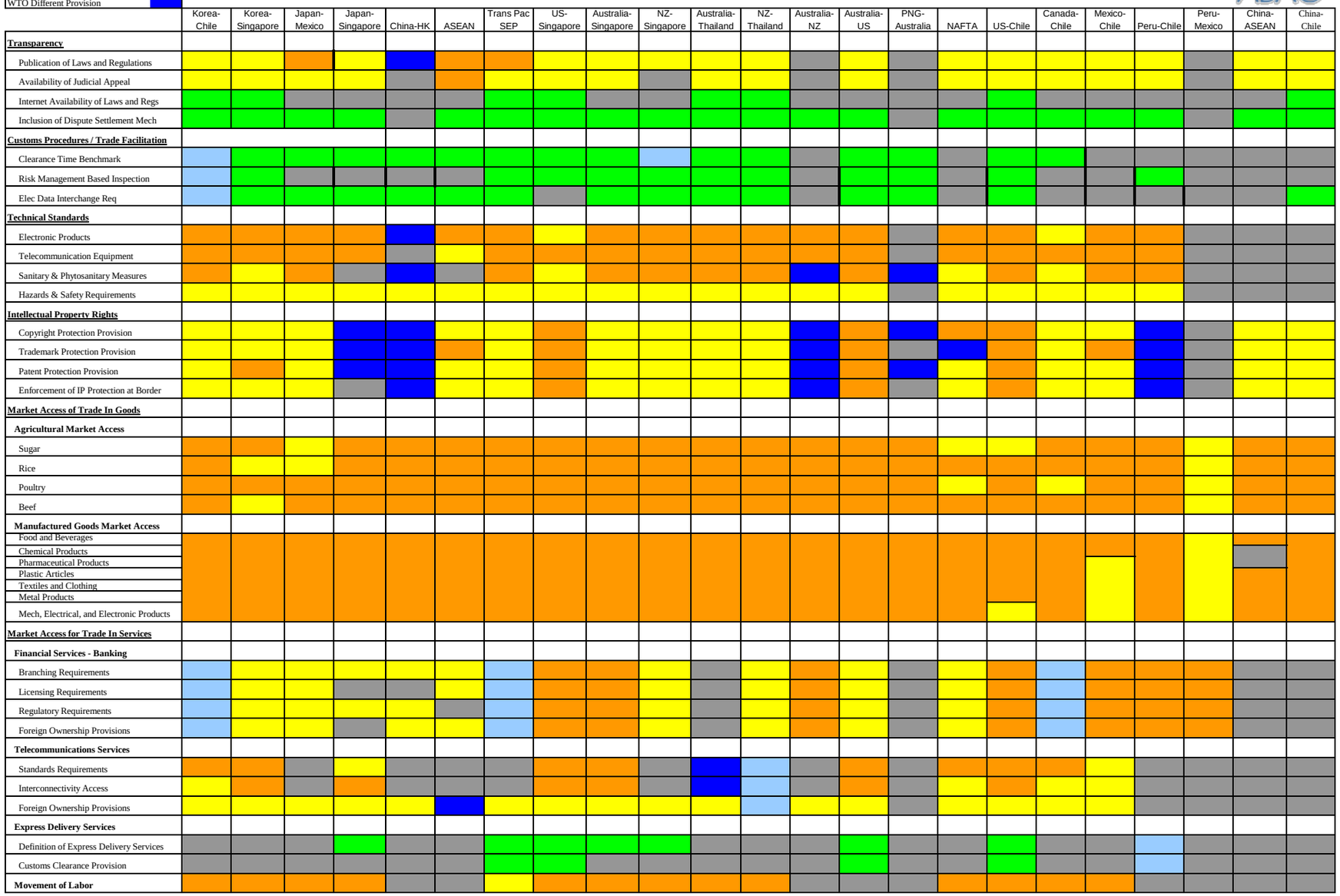
Legend:

No Provision: Explicit Exclusion
No Provision: No Mention
Provision Exists (non-WTO)
WTO Consistent Provision
WTO Plus Provision
WTO Different Provision

A Comparative Analysis of FTA/RTAs Among APEC Economies

USC

ABAC



University of Southern California

A Comparative Analysis of FTAs Among APEC Economies

Legend

Rules of Origin

ROO

General Rules of Origin		Textile Addendum
Tariff Change		Fiber Forward
Ad Valorem		Yarn Forward
Substantial Transformation		Fabric Forward
Mixed		Mixed
		No Textile ROO stated

FTA	General Rules of Origin		Textile Addendum
Korea-Chile			
Korea-Singapore			
Japan-Mexico			
Japan-Singapore			
China-HK			
ASEAN			
Trans Pacific SEP			
US-Singapore			
Australia-Singapore			
NZ-Singapore			
Australia-Thailand			
NZ-Thailand			
Australia-NZ			
Australia-US			
PNG-Australia			
NAFTA			
US-Chile			
Canada-Chile			
Mexico-Chile			
Peru-Chile			
Peru-Mexico			
Peru-USA			
China-ASEAN			
China-Chile			

ABAC

ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN) FREE TRADE AREA

TEXT FOR THE ASEAN FTA CAN BE FOUND ONLINE AT:

http://www.aseansec.org/12039.htm

TRANSPARENCY
INCLUSION OF DISPUTE SETTLEMENT MECHANISM

Article 22 Consultation and review
1. In addition to the provisions for consultations elsewhere in this Agreement, Ministers of the Member States shall meet annually or otherwise as appropriate to review the operation of the Agreement.

2. The Member States shall, at the written request of either, promptly enter into consultations with a view to seeking an equitable and mutually satisfactory solution if the Member State which requested the consultations considers that:

(a) an obligation under this Agreement has not been or is not being fulfilled;

(b) a benefit conferred upon it by this Agreement is being denied;

(c) the achievement of any objective of this Agreement is being or may be frustrated; or

(d) a case of difficulty has arisen or may arise.

3. The Member States shall undertake a general review of the operation of this Agreement in 1988. Under the general review the Member States shall consider:
(a) whether the Agreement is bringing benefits to Australia and New Zealand on a reasonably equitable basis having regard to factors such as the impact on trade in the Area of standards, economic policies and practices, co-operation between industries, and Government (including State Government) purchasing policies;

(b) the need for additional measures in furtherance of the objectives of the Agreement to facilitate adjustment to the new relationship;

(c) the need for changes in Government economic policies and practices, in such fields as taxation, company law and standards and for changes in policies and practices affecting the other Member State concerning such factors as foreign investment, movement of people, tourism, and transport, to reflect the stage reached in the closer economic relationship;

(d) such modification of the operation of this Agreement as may be necessary to ensure that quantitative import restrictions and tariff quotas within the meaning of Article 5 of this Agreement on goods traded in the Area are eliminated by 30 June, 1995; and

(e) any other matter relating to this Agreement.

4. For the purpose of this Agreement, consultations between the Member States shall be deemed to have commenced on the day on which written notice requesting the consultations is given.

CUSTOMS PROCEDURES/TRADE FACILITATION

Article 21 Customs Harmonisation
The Member States recognise that the objectives of this Agreement may be promoted by harmonisation of customs policies and procedures in particular cases. Accordingly the Member States shall consult at the written request of either to determine any harmonisation which may be appropriate.

SANITARY AND PHYTOSANITARY MEASURES

Article 18 Exceptions
Provided that such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade in the Area, nothing in this Agreement shall preclude the adoption by either Member State of measures necessary: (c) to protect human, animal or plant life or health, including the protection of indigenous or endangered animal or plant life;

MARKET ACCESS OF TRADE IN GOODS

Article 4 Tariffs
1. Goods originating in the territory of a Member State which in the territory of the other Member State were free of tariffs on the day immediately before the day on which this Agreement enters into force or which subsequently become free of tariffs shall remain free of tariffs.

2. No tariff shall be increased on any goods originating in the territory of the other Member State.

3. Tariffs on all goods originating in the territory of the other Member State shall be reduced in accordance with paragraph 4 of this Article and eliminated within five years from the day on which this Agreement enters into force.

4. If, on the day immediately before the day on which this Agreement enters into force, goods originating in the territory of the other Member State are:
(a) subject to tariffs not exceeding 5 per cent ad valorem or tariffs of equivalent effect, they shall be free of tariffs from the day on which this Agreement enters into force;

(b) subject to tariffs of more than 5 per cent but not exceeding 30 per cent ad valorem or tariffs of equivalent effect, tariffs on those goods shall be reduced on the day on which this Agreement enters into force by 5 percentage points and rounded down to the nearest whole number where fractional rates are involved. Thereafter, tariffs shall be reduced by 5 percentage points per annum; or

(c) subject to tariffs of more than 30 per cent ad valorem or tariffs of equivalent effect, tariffs on those goods shall be reduced on the day on which this Agreement enters into force and annually thereafter by an amount calculated by dividing by six thetariff applying to the goods on the day immediately before the day on which this Agreement enters into force and rounding to the nearest whole number, with an additional deduction being made, where necessary, at the time of the first reduction so that tariffs are eliminated over a five-year period. A fraction of exactly one-half per cent shall be rounded to the higher whole number.

5. For the purposes of paragraph 4 of this Article, the term "tariffs of equivalent effect" shall mean tariffs which are not expressed solely in ad valorem terms. Where goods are subject to such tariffs, for the purposes of determining which of the subparagraphs (a), (b) or (c) of paragraph 4 of this Article shall apply to those goods, those tariffs shall be deemed to be equivalent to the ad valorem rates obtained by expressing the tariff as a percentage of the assessed unit value of the goods imported from the other Member State in the year ending 30 June 1982. If in that year there have been no imports of those goods from the other Member State or, if in the opinion of the Member State which is making adjustments to its tariffs the imports of those goods were not representative of the usual and ordinary course of trade between the Member States in those goods, the Member State making the adjustment shall take account of the imports

from the other Member State in the previous year. If this is insufficient to represent the usual and ordinary course of trade between the Member States in those goods then global imports shall be used to determine the adjustment on the same basis.
6. Where in this Article reference is made to goods being subject to a tariff on the day immediately before the day on which this Agreement enters into force, it shall in relation to the Australian Tariff mean the simplified Tariff that would have been effective from 1 January 1983 in the absence of this Agreement.

7. Where in this Agreement reference is made to:
(a) a Tariff Heading, it shall in relation to the Australian Tariff mean an Item; and

(b) a Tariff Item, it shall in relation to the Australian Tariff mean a Sub-Item, Paragraph or Sub-Paragraph as the case may be.

8. A Member State may reduce or eliminate tariffs more rapidly than is provided in paragraph 4 of this Article.

9. Tariffs on goods originating in New Zealand and imported into Australia shall in no case be higher than the lowest tariff applicable to the same goods if imported from any third country other than Papua New Guinea or countries eligible for any concessional tariff treatment accorded to less developed countries.

10. Tariffs on goods originating in Australia and imported into New Zealand shall in no case be higher than the lowest tariff applicable to the same goods if imported from any third country other than the Cook Islands, Niue, Tokelau and Western Samoa or countries eligible for any concessional tariff treatment accorded to less developed countries.

11. In any consideration of assistance and protection for industry a Member State:
(a) shall set the tariff at the lowest tariff which:

> (i) is consistent with the need to protect its own producers or manufacturers of like or directly competitive goods; and
> (ii) will permit reasonable competition in its market between goods produced or manufactured in its own territory and like goods or directly competitive goods imported from the territory of the other Member State;

(b) in forwarding a reference to an industry advisory body, shall request that body to take account of sub-paragraph (a) of this paragraph in framing its recommendations;

(c) wherever practicable, shall not reduce the margins of preference accorded the other Member State; and

(d) shall give sympathetic consideration to maintaining a margin of preference of at least 5 per cent for the other Member State when reducing normal or general tariffs either substantively or by by-law or concession on goods of significant trade interest to that Member State.

12. For the purpose of paragraph 11 of this Article "Margin of Preference" means:

> (i) in the case of Australia, the difference between the General tariff imposed on goods and the tariff imposed on the same goods originating in New Zealand; and
> (ii) in the case of New Zealand, the difference between the Normal tariff imposed on goods and the tariff imposed on the same goods originating in Australia.

13. In this Article "Tariff" shall include any customs or import duty and charge of any kind imposed in connection with the importation of goods, including any form of primage duty, surtax or surcharge on imports, with the exception of:
(a) fees or charges connected with importation which approximate the cost of
services rendered and do not represent an indirect form of protection or a taxation for
fiscal purposes;

(b) duties, taxes or other charges on goods, ingredients and components, or those portions of such duties, taxes or other charges, which are levied at rates not higher than those duties, taxes or other charges applied to like goods, ingredients and components produced or manufactured in the country of importation;

(c) premiums offered or collected on imported goods in connection with any tendering system in respect of the administration of quantitative import restrictions or tariff quotas;

(d) duties applying to imports outside the established quota levels of goods subject to tariff quota, provided that paragraphs 9 and 10 and sub-paragraph 11(c) of this Article shall apply to such duties;

(e) sales or like taxes or those portions of such taxes which do not exceed the taxes applied to like goods produced or manufactured in the country of importation;

(f) charges imposed pursuant to Articles 14, 15, 16 or 17 of this Agreement; and

(g) those by-law or concessionary rates which are mutually determined by the Member States.

TRANSPARENCY
ARTICLE 10 Transparency

Article X of the GATT 1994 is incorporated into and shall form part of this Agreement.

DISPUTE SETTLEMENT
ARTICLE 1- Scope and Coverage
1. Unless otherwise agreed by the Parties elsewhere in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement.

2. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement.

3. Findings and recommendations of an arbitral tribunal cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by regional or local governments or authorities within the territory of a Party. When an arbitral tribunal has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions of this Chapter relating to compensation and suspension of benefits apply in cases where it has not been possible to secure such observance.

5. Arbitral tribunals shall clarify the provisions of this Agreement in accordance with customary rules of interpretation of public international law.

ARTICLE 2 Consultations
1. Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.

2. Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, as a result of the failure of the other Party to carry out its obligations under this Agreement, may, with a view to achieving satisfactory settlement of the matter, make representations or proposals to the other Party, which shall give due consideration to the representations or proposals made to it.

3. If a request for consultation is made, the Party to which the request is made shall reply to the request within 7 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

4. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:
(a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and
(b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

ARTICLE 3 Good Offices, Conciliation or Mediation
1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 4 (Appointment of Arbitral Tribunals).

ARTICLE 4 Appointment of Arbitral Tribunals
If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal under this Article. The request shall include a statement of the claim and the grounds on which it is based.

ARTICLE 5 Composition of Arbitral Tribunals
1. The arbitral tribunal referred to in Article 4 (Appointment of Arbitral Tribunals) shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request under Article 4, and the two arbitrators appointed shall, within 30 days of the appointment of the second of them, designate by common agreement the third arbitrator.

2. The Parties shall, within 7 days of the designation of the third arbitrator, approve or disapprove the appointment of that arbitrator, who shall, if approved, chair the tribunal.

3. If the third arbitrator has not been designated within 30 days of the appointment of the second arbitrator, or one of the Parties disapproves the appointment of the third arbitrator, the Ministers in charge of trade negotiations of the Parties shall consult directly in order to jointly appoint the chair of the arbitral tribunal within a further period of 30 days.

4. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

5. Any person appointed as a member or chair of the arbitral tribunal shall not be a national of either Party and shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence. Additionally, the chair shall not have his or her usual place of residence in the territory of, nor be employed by, either Party.

ARTICLE 6 Functions of Arbitral Tribunals
1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of this Agreement, it shall recommend that a Party bring the measure into conformity with that provision.

2. The findings and recommendations of the arbitral tribunal shall be set out in a report released to the Parties. An arbitral tribunal may make its findings and recommendations upon the default of a Party.

3. An arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

4. The arbitral tribunal shall, in consultation with the Parties and apart from the matters set out in Article 7 (Proceedings of Arbitral Tribunals), regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

ARTICLE 7 Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

2. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions or its submissions to the public; provided that a Party shall treat as confidential information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

3. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

4. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its submission. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its submission.

5. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to present its submission first, and shall be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

6. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing. 7. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

8. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

9. The arbitral tribunal shall have the right, in consultation with the Parties, to seek information and technical advice from any individual or body which it deems appropriate, and shall make any such information and technical advice available to the Parties. A Party shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

10. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its draft report prior to its finalization and shall include a discussion of any comments by the Parties in its final report.

11. The arbitral tribunal shall release to the Parties its final report on the dispute referred to it within 60 days of its formation. When the arbitral tribunal considers that it cannot release its final report within 60 days, it shall inform the

Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the Parties.

ARTICLE 8 Suspension and Termination of Proceedings

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal established under this Agreement, in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

ARTICLE 9 Implementation

1. The Party concerned shall comply with the arbitral tribunals recommendations within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties or, where the Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral tribunal's report, either Party may refer the matter to the tribunal, which shall determine the reasonable period of time following consultation with the Parties.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the recommendations of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal. The arbitral tribunal shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

ARTICLE 10 Compensation and Suspension of Benefits

1. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance with the recommendations of the arbitral tribunal under Article 9.2 within 20 days of the report of that arbitral tribunal being provided to the Parties, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation has been reached within 20 days after the request of the complaining Party to enter into negotiations on compensatory adjustment, the complaining Party may request the original arbitral tribunal to determine the appropriate level of any suspension of benefits conferred on the other Party under this Agreement. Where the original arbitral tribunal cannot hear the matter for any reason, a new tribunal shall be appointed under Article 4 (Appointment of Arbitral Tribunals).

3. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.

4. In considering what benefits to suspend under Article 10.2:
(a) the Party having invoked the dispute settlement procedures should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
(b) the Party having invoked the dispute settlement procedures may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's recommendations has done so, or a mutually satisfactory solution is reached.

ARTICLE 11 Expenses
Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the Chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

CUSTOMS PROCEDURES
ARTICLE 3 General Provisions
1. Customs procedures of both Parties shall conform, where possible and to the extent permitted by their respective domestic laws, rules and regulations, to the standards and recommended practices of the World Customs Organization, including the principles of the revised International Convention on the Simplification and Harmonization of Customs Procedures. Clearance Time Benchmark

ARTICLE 5 Risk Management
1. The Parties shall administer customs procedures at their respective borders so as to facilitate the clearance of low-risk goods and focus on high-risk goods.

2. The Parties shall apply and further develop risk management techniques in the performance of their customs procedures.

ELECTRONIC DATA INTERCHANGE REQUIREMENT
ARTICLE 4 Paperless Trading
1. The customs administrations of both Parties, in implementing initiatives which provide for the use of paperless trading, shall take into account the methodologies agreed in APEC and the World Customs Organization.

2. The customs administration of each Party shall work towards having electronic means for all its customs reporting requirements as soon as practicable.

3. The customs administration of each Party shall provide electronic systems that support business applications between it and its trading community.

TECHNICAL REGULATIONS AND SANITARY AND PHYTOSANITARY MEASURES
ARTICLE 1 Purposes and Definitions
1. The purposes of this Chapter are to:
(a) facilitate trade and investment between the Parties through collaborative efforts which minimize the impact of mandatory requirements and/or assessments of manufacturers or manufacturing processes on the goods traded between the Parties, in the most appropriate or cost-effective manner;
(b) complement bilateral agreements and arrangements between the Parties relating to mandatory requirements; and
(c) build on the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore.

2. For the purposes of this Chapter, unless the context otherwise requires or it is otherwise defined in a Sectoral Annex:
(a) "conformity assessment" shall have the same meaning as in the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore;

(b) "equivalence" means the state wherein mandatory requirements applied in the territory of the exporting Party, though different from the mandatory requirements applied in the territory of the importing Party, meet the legitimate objective or achieve the appropriate level of sanitary or phytosanitary protection of the mandatory requirements applied in the territory of the importing Party;
(c) "mandatory requirements" means all technical regulations and sanitary and phytosanitary measures as may be set out in a Party's laws, regulations and administrative requirements;
(d) "regulatory authority" means an entity of a Party that exercises a legal right to determine the mandatory requirements, control the import, use or supply of goods within its territory and/or take enforcement action to ensure that goods marketed within its territory comply with its mandatory requirements;
(e) "sanitary or phytosanitary measure" shall have the same meaning as in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;
(f) "Sectoral Annex" means an annex to this Chapter which specifies the arrangements in respect of a specific product sector; and
(g) "technical regulation" shall have the same meaning as in the WTO Agreement on Technical Barriers to Trade.

ARTICLE 2 Scope and Obligations
1. This Chapter shall apply to mandatory requirements adopted or maintained by the Parties to fulfill their legitimate objectives and/or achieve their appropriate level of sanitary or phytosanitary protection.

2. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations:
(a) mandatory requirements, as appropriate to its particular national circumstances; and
(b) mandatory requirements necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfill other legitimate objectives, at the levels it considers appropriate.

3. Each Party shall retain all authority under its laws to interpret and implement its mandatory requirements. This includes the authority to take appropriate measures for goods that do not conform to the Party's mandatory requirements. Such measures may include withdrawing goods from the market, prohibiting their placement on the market or restricting their free movement, initiating a product recall or prohibiting an import.

4. The provisions of this Chapter shall apply to particular Sectoral Annexes as provided therein.

ARTICLE 3 Origin
This Chapter applies to all goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties, regardless of the origin of those goods, unless otherwise specified in a Sectoral Annex, or unless otherwise specified by any mandatory requirement of a Party.

ARTICLE 4 Harmonization
The Parties shall, where appropriate, Endeavour to work towards harmonization of their respective mandatory requirements taking into account relevant international standards, recommendations and guidelines, in accordance with their international rights and obligations.

ARTICLE 5 Equivalence of Mandatory Requirements
1. The Parties shall give favorable consideration to accepting the equivalence of each other's mandatory requirements consistent with the purpose of this Chapter.

2. A Party shall accept the equivalence of the mandatory requirements, and/or the results of conformity assessment and approval procedures, of the other Party in accordance with the respective Sectoral Annex.

3. For the purposes of Article 5.2, a Sectoral Annex shall provide the following details:
(a) the procedures for determining and implementing the equivalence of each Party's mandatory requirements; and/or
(b) the procedures for accepting the results of the conformity assessment and approval procedures; and
(c) the regulatory authorities designated by each Party.

ARTICLE 6 Cooperative Activities on Sanitary and Phytosanitary/Quarantine Matters
1. The Parties shall endeavor to develop a work program and mechanisms for co-operative activities in the areas of technical assistance and capacity building to address plant, animal and public health and food safety issues of mutual interest.

2. The Parties shall, where appropriate, endeavor to develop further the use and product coverage of electronic means of data transfer, including electronic health certificates.

ARTICLE 7 Conformity Assessment
1. The Parties, through the Joint Committee established by Article 11 of the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore, shall consider arrangements additional to those provided for in this Chapter to ensure that differences between the structure, organization and operation of conformity assessment procedures in their respective territories do not unnecessarily impede trade between them.

2. For the purposes of conformity assessment, each Party shall, on the request of the other Party, and in accordance with relevant international obligations and its respective applicable domestic laws, rules and regulations, take reasonable steps to facilitate access in its territory for inspection, testing and other relevant procedures.

3. The Parties affirm their intention to adopt and apply, with such modifications as may be necessary, the principles set out in the APEC Information Notes on Good Regulatory Practice for Technical Regulation with respect to conformity assessment and approval procedures in meeting their international obligations under the WTO Agreement on Technical Barriers to Trade.

ARTICLE 8 Exchange of Information, and Consultation
1. The Parties shall provide notification of any changes to their mandatory requirements in accordance with their WTO obligations or in specific cases as appropriate.

2. The Parties shall, within the context of this Chapter, establish contact points to expeditiously:
(a) broaden the exchange of information; and
(b) give favorable consideration to any written request for consultation.

3. The Parties shall, upon a request in writing of either Party and where appropriate, jointly:
(a) identify and develop new Sectoral Annexes for priority sectors for this Chapter;
(b) agree to amend or increase the scope of existing Sectoral Annexes with a view to minimizing the impact of mandatory requirements on goods traded between the Parties; and
(c) agree on a work program for the implementation of this Article, consistent with the provisions of this Chapter, and implement that work program expeditiously.

ARTICLE 9 Confidentiality
Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:
(a) be contrary to its essential security interests;
(b) be contrary to the public interest as determined by its domestic laws, rules and regulations;
(c) be contrary to any of its domestic laws, rules and regulations, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
(d) impede law enforcement; or
(e) prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 10 Final Provisions on Sectoral Annexes
1. The Parties shall conclude as appropriate Sectoral Annexes which shall provide the implementing arrangements for this Chapter.

2. A Sectoral Annex shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of that Sectoral Annex.

3. A Party may terminate a Sectoral Annex in its entirety by giving the other Party six months' advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment or equivalence for the duration of the six-month advance notice period.

4. Where urgent problems of safety, health, consumer or environmental protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such cases, the Party shall immediately advise the other Party of the nature of the urgent problem, the goods covered and the objective and rationale of the suspension.

13 INTELLECTUAL PROPERTY
ARTICLE 1 Purpose and Definitions
1. The purpose of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.

2. For the purposes of this Chapter:
(a) "intellectual property rights" refers to copyright and related rights; rights in trade marks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as defined and described in the WTO TRIPS Agreement;
(b) "WIPO" means the World Intellectual Property Organization; and
(c) "WTO TRIPS Agreement" means the WTO Agreement on Trade-

Related Aspects of Intellectual Property Rights.

ARTICLE 2 Adherence to International Instruments
1. Each Party reaffirms its commitment to the provisions of the WTO TRIPS Agreement.

2. The Parties shall accede to or ratify the WIPO Copyright Treaty concluded at Geneva on 20 December 1996 within four years of the date of entry into force of this Agreement, subject to completion of the necessary legislative and consultative processes required in each Party before formal accession to, or ratification of, that Treaty.

3. The Parties shall accede to or ratify the WIPO Performances and Phonograms Treaty concluded at Geneva on 20 December 1996 within four years of the date of entry into force of this Agreement, subject to the completion of the necessary legislative and consultative processes required in each Party before formal accession to, or ratification of, that Treaty.

4. The Parties agree to comply with the provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs concluded at Geneva on 2 July 1999, subject to the enactment of laws necessary to apply those provisions in their respective territories.

ARTICLE 3 Storage of Intellectual Property in Electronic Media
Copies of copyright material to which the right of reproduction applies shall include electronic copies of works, sound recordings, and cinematographic films. This is subject to limitations or exceptions as permitted under the laws of the Parties.

ARTICLE 4 Measures to Prevent the Export of Goods that Infringe Copyright or Trade Marks
Each Party, on receipt of information or complaints, shall take measures to prevent the export of goods that infringe copyright or trade marks, in accordance with its laws, rules, regulations, directives or policies.

ARTICLE 5 Cooperation on Enforcement
The Parties agree to cooperate with a view to eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives or policies. Such cooperation shall include:
(a) the notification of contact points for the enforcement of intellectual property rights;
(b) the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;
(c) policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora; and
(d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually agreed between the Parties.

ARTICLE 6 Cooperation on Education and Exchange of Information on Protection,
Management and Exploitation of Intellectual Property Rights

The Parties, through their competent agencies, agree to:
(a) exchange information and material on programs pertaining to intellectual property rights education and awareness, and to commercialization of intellectual property, to the extent permissible under their respective laws, rules, regulations and directives; and
(b) encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organizations and other entities in the field of intellectual property rights protection and development, including in the education and training of patent agents.

ARTICLE 7 Settlement of Disputes relating to Domain Names and Trade Marks
Both Parties shall continue to monitor and support, where appropriate, endeavors to develop international policy or guidelines governing the resolution of disputes relating to domain names and trade marks.

TRADE IN GOODS
ARTICLE 1, Definitions
For the purposes of this Chapter:

(a) customs duties. means any duties or charges of any kind imposed in connection with the importation of a good, and any surtaxes or surcharges imposed in connection with such importation, but does not include:

(i) charges equivalent to an internal tax including excise duties and a goods and services tax imposed consistently with a Party's WTO obligations;

(ii) fees or other charges that:

(A) are limited in amount to the approximate cost of services rendered; and

(B) do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes; and

(iii) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures;

(b) export subsidy. means a subsidy as defined by Article 3 of the WTO Agreement on Subsidies and Countervailing Measures and includes export subsidies listed in Article 9 of the WTO Agreement on Agriculture; and

(c) the GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994, including Annex I (Notes and Supplementary Provisions).

ARTICLE 2 National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994. To this end, the provisions of Article III of the GATT 1994, are incorporated into and shall form part of this Agreement.

ARTICLE 3 Customs Duties

1. Each Party shall eliminate all customs duties on goods originating in the territory of the other Party that meet the requirements for .originating goods. as set out in Chapter 3 (Rules of Origin). All customs duties on such goods shall thereby be free from the date of entry into force of this Agreement.

2. The classification of goods traded between the Parties shall be in conformity with the Harmonized Commodity Description and Coding System (HS).

ARTICLE 4 Customs Value

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994.

ARTICLE 5 Export Duties

A Party shall not impose export duties on the goods set out in Annex 1 (Export Duties), when exported from its territory to the territory of the other Party.

ARTICLE 6 Non-tariff Measures

1. Neither Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under Article 6.1 and that they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

ARTICLE 7 Subsidies and Countervailing Measures

1. The Parties agree to prohibit export subsidies on all goods, including agricultural goods.

2. The Parties reaffirm their commitment to abide by the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

ARTICLE 8 Anti-Dumping Measures

1. With respect to the application of anti-dumping measures, the Parties reaffirm their commitment to the provisions of the WTO Agreement on Implementation of Article VI of the GATT 1994.

2. The Parties agree to observe the following practices in anti-dumping cases between them:

(a) the time frame to be used for determining the volume of dumped imports in an investigation or review shall be representative of the imports of both dumped and non-dumped goods, for a reasonable period, and such reasonable period shall normally be at least 12 months;

(b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the WTO Agreement on Implementation of Article VI of the GATT 1994, the Party taking such a decision, shall normally apply the .lesser duty. rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry; and

(c) notification procedures shall be as follows:

(i) immediately following the acceptance by a Party of a properly documented application from an industry in that Party for the initiation of an anti-dumping investigation in respect of goods from the other Party, the first Party shall immediately inform the other Party;

(ii) where a Party considers that, in accordance with Article 5 of the WTO Agreement on Implementation of Article VI of the GATT 1994, there is sufficient evidence to justify the initiation of an antidumping investigation, it shall give written notice to the other Party and shall act in accordance with Article 17.2 of that Agreement concerning consultations.

3. At reviews of this Agreement under Article 3 (Review) of Chapter 17 (Final Provisions), the Parties shall review this Article, including a consideration of any recommendations by the WTO Committee on Anti-Dumping Practices.

ARTICLE 9 Safeguard Measures

A Party shall not initiate or take any safeguard measure within the meaning of the WTO Agreement on Safeguards against the goods of the other Party from the date of entry into force of this Agreement.

ARTICLE 10 Transparency

Article X of the GATT 1994 is incorporated into and shall form part of this Agreement.

ARTICLE 11 Measures to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures.

ARTICLE 12 General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals;

(b) necessary to protect human, animal or plant life or health;

(c) relating to the importations or exportations of gold or silver;

(d) necessary to secure compliance with laws or regulations which are not
inconsistent with the provisions of this Chapter, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of the GATT 1994, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
(e) relating to the products of prison labor;
(f) imposed for the protection of national treasures of artistic, historic or archaeological value;
(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;
(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Chapter relating to non-discrimination;
(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Chapter shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

ARTICLE 13 Security Exceptions
Nothing in this Chapter shall be construed:
(a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
(i) relating to fissionable materials or the materials from which they are derived;
(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
(iii) taken in time of war or other emergency in international relations; or
(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

FINANCIAL SERVICES
ARTICLE 1 Definitions and Scope
1. The purpose of this Chapter is to provide for commitments additional to Chapter 7 (Trade in Services) and Chapter 8 (Investment) in relation to financial services to ensure that the market access treatment of financial services is based on transparent principles that are applied in a non-discriminatory manner. In the event of any inconsistency between the former provisions and the provisions of this Chapter, the latter shall prevail to the extent of such inconsistency.

2. For the purposes of this Chapter:
(a) financial service. means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature. Financial services shall include the activities as stated in Appendix 1;
(b) financial service supplier. means any natural or legal person authorized by the law of a Party to supply financial services;
(c) new financial service. means a financial service, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party; and

(d) public entity. means:
(i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

3. For the purposes of Articles 1(a) and 2.2(b) of Chapter 7 (Trade in Services), .a service supplied in the exercise of governmental authority. means the following:
(a) activities conducted by a central bank or monetary authority or by any other public entity, including the management of official foreign reserves, in pursuit of monetary or exchange rate policies;
(b) activities forming part of a statutory system of social security or public retirement plans; and
(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

4. If a Party allows any of the activities referred to in Articles 1.3(b) or 1.3(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, measures affecting such activities shall not be excluded from this Chapter and Chapter 7 (Trade in Services).

ARTICLE 2 New Financial Services
Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service of a type similar to those services that a Party would permit its own financial service suppliers, in like circumstances, to supply under its domestic law. A Party may however determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

ARTICLE 3 Prudential and Regulatory Supervision
1. Nothing in this Agreement shall be construed to prevent a Party from taking measures for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of a Party's financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

2. These measures shall not constitute a means of arbitrary or unjustifiable discrimination against financial service suppliers of the other Party in comparison to its own like financial service suppliers, or a disguised restriction on trade in services. Each Party shall endeavor to ensure that these measures are not more burdensome than necessary to achieve their aim.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 4 Transfers of Information and Processing of Information
Neither Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph

restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Agreement.

ARTICLE 5 Exceptions
For the avoidance of doubt, this Chapter shall be subject to the general and security exceptions listed in Articles 18 and 19 of Chapter 7 (Trade in Services) and Articles 19 and 20 of Chapter 8 (Investment).

ARTICLE 6 Dispute Settlement
Arbitral tribunals agreed between or appointed by the Parties under Chapter 16 (Dispute Settlement) to adjudicate disputes on prudential issues and other financial matters, and any procedures agreed for good offices, conciliation or mediation on such matters, shall have or provide for the necessary expertise relevant to the specific financial service and dispute.

APPENDIX 1 Insurance and insurance-related services
(i) Direct insurance (including co-insurance):
    (A) life
    (B) non-life;
(ii) Reinsurance and retrocession;
(iii) Insurance intermediation, such as brokerage and agency;
(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
Banking and other financial services (excluding insurance)
(v) Acceptance of deposits and other repayable funds from the public;
(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
(vii) Financial leasing;
(viii) All payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;
(ix) Guarantees and commitments;
(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
    (A) money market instruments (including checks, bills, certificates of deposits);
    (B) foreign exchange;
    (C) derivative products including, but not limited to, futures and options;
    (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
    (E) transferable securities;
    (F) other negotiable instruments and financial assets, including bullion;
(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
(xii) Money broking;
(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

TELECOMMUNICATION SERVICES
ARTICLE 9 Additional Obligations Relating to Major Suppliers[1] [2]
Non-discrimination
(a) Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications networks or services of the other Party treatment no less favorable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated supplier of public telecommunications networks or services regarding:
(i) availability, provisioning, rates[3], or quality of like public telecommunications networks or services; and
(ii) availability of technical interfaces where such suppliers of public telecommunications networks or services and subsidiaries, affiliates and non-affiliates of the major supplier are in like circumstances.

Competitive Safeguards
(a) Each Party shall maintain appropriate measures[4] for the purpose of preventing major suppliers in its territory from engaging in or continuing anticompetitive practices.
(b) The anti-competitive practices referred to in Article 9.2(a) shall include:
(i) engaging in anti-competitive cross-subsidization;
(ii) using information obtained from competitors with anticompetitive results;
(iii) not making available, on a timely basis, to suppliers of public telecommunications networks or services of the other Party, technical information about essential facilities and commercially relevant information which is necessary for them to provide services; and
(iv) pricing services in a manner that is likely to unreasonably restrict competition, such as predatory pricing.

Unbundled Network Elements
(a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers of the other Party access to network elements for the provision of public telecommunications services at any technically feasible point, on an unbundled basis, in a timely fashion; and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
(b) Each Party may determine, in accordance with its domestic laws and regulations, which network elements it requires major suppliers in its territory to provide access to in accordance with Article 9.3(a) on the basis of the costs incurred by a major supplier in supplying public telecommunications networks or services to itself may be determined in accordance with any cost-oriented costing methodology considered appropriate by a Party. Treatment that is no less favorable regarding rates for like public telecommunications networks or services may take into account the legitimate transaction costs which the major supplier incurs in supplying such public telecommunications networks or services to suppliers of public telecommunications networks or services of the other Party.

The maintenance of appropriate measures includes the effective enforcement of such measures and technical feasibility of unbundling and the state of competition in the relevant market.

Co-Location

[1] The maintenance of appropriate measures includes the effective enforcement of such measures.
[2] For the avoidance of doubt, the obligations imposed under this Article only apply with respect to those public telecommunications networks or services, or parts thereof, that result in a supplier of public telecommunications networks or services being a major supplier.
[3] The costs incurred by a major supplier in supplying public telecommunications networks or services to itself may be determined in accordance with any cost-oriented costing methodology considered appropriate by a Party. Treatment that is no less favorable regarding rates for like public telecommunications networks or services may take into account the legitimate transaction costs which the major supplier incurs in supplying such public telecommunications networks or services to suppliers of public telecommunications networks or services of the other Party.
[4] The maintenance of appropriate measures includes the effective enforcement of such measures.

(a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
(b) Where physical co-location under Article 9.4(a) is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers co-operate with facilities-based suppliers to find and implement the most feasible alternative solution in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory. Such solutions may include:

(i) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;
(ii) conditioning additional equipment space;
(iii) optimizing the use of existing space; or
(iv) finding adjacent space.

(c) Each Party may determine in accordance with its domestic laws and regulations the locations at which it requires major suppliers in its territory to provide co-location under Article 9.4(a) on the basis of the state of competition in the relevant market.

Resale

(a) Each Party shall ensure that major suppliers in its territory:

(i) allow suppliers of public telecommunications networks or services of the other Party to purchase at reasonable rates, for the purpose of resale, specific public telecommunications services supplied by the major suppliers at retail that are designated by the first Party; and
(ii) do not impose unreasonable or discriminatory conditions or limitations on the resale of such public telecommunications services.

Rights of Way

(a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, or any other structures deemed necessary by the Party, which are owned or controlled by such major suppliers to facilities based suppliers of the other Party:

(i) in a timely fashion; and
(ii) on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.

(b) Each Party may determine in accordance with its domestic laws and regulations the poles, ducts, conduits or other structures to which it requires major suppliers in its territory to provide access under Article 9.6(a) on the basis of the state of competition in the relevant market.

Interconnection with a Major Supplier[5]

(a) Each Party shall ensure that major suppliers in its territory provide interconnection to facilities-based suppliers of the other Party:

(i) at any technically feasible point in the major supplier's network;
(ii) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;[6]
(ii) of a quality no less favorable than that provided by such major supplier for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

[5] Australia's interconnection regime provides access on terms and conditions which are fair and reasonable to all parties and which do not unfairly discriminate between users. Access rights are guaranteed by legislation and the terms and conditions of access are established primarily through processes of commercial negotiation or by reference to access undertakings given by suppliers of public telecommunications networks or services which may draw upon an industry code of practice.

[6] In Australia, the rate at which interconnection is provided is determined by negotiation. Both negotiating parties have recourse to the regulator which will make a decision based on transparent criteria to ensure that rates are fair and reasonable in the circumstances.

(iv) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates[7] that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(v) upon request, at points in addition to the network termination points offered to the majority of facilities-based suppliers, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect with major suppliers in its territory pursuant to at least one of the following options:

(i) a publicly available reference interconnection offer;

(ii) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services;

(iii) an individualized agreement between the major supplier and the supplier of public telecommunications networks or services that seeks to interconnect with it; or

(iv) binding arbitration.

(c) Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

(d) Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

Resolution of Interconnection Disputes

(a) When facilities-based suppliers are unable to resolve disputes regarding the terms, conditions and rates on which interconnection is to be provided by a major supplier, they shall have recourse to the regulator, which shall aim to resolve the disputes within 180 days of the referral to it, provided that the resolution of complex disputes may take longer than 180 days.

(b) Where the regulator is unable to resolve the disputes referred to in Article 9.8(a) within 180 days, each Party shall ensure that the regulator endeavors to provide interim determinations on the disputes where necessary to ensure that facilities-based suppliers of the other Party are able to interconnect with a major supplier.

Foreign Ownership Provisions

[7] The regulator may resolve any dispute on what costs are relevant in determining rates.

TRANSPARENCY

Article 1401 Definition
For the purposes of this Chapter, “administrative ruling of general application” means an administrative ruling or interpretation that applies to all persons and fact situations that fall within its ambit and that establishes a norm of conduct, but does not include:
a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, service or investment of the other Party in a specific case; or
a ruling that adjudicates with respect to a particular act or practice.

Article 1402 Publication
Each Party shall ensure that its laws, regulations, and administrative rulings of general application pertaining to trade in goods, services and investment are promptly published or otherwise made available in such a manner as to enable interested persons from the other Party to become acquainted with them. Each Party shall maintain an official journal or journals and publish any measures referred to in Paragraph 1 in such journals. Each Party shall publish such journals regularly and make copies of them readily available to the public. A Party may comply with Paragraphs 1 and 2 by publication on the Internet. When possible, a Party shall publish in advance any measure referred to in Paragraph 1 that it proposes to adopt and shall provide, where applicable, interested persons a reasonable opportunity to comment on such proposed measures. Each Party shall endeavour promptly to provide information and to respond to questions from the other Party pertaining to any measure referred to in Paragraph 1.

Article 1403 Contact Point
Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. Upon request, the contact point shall identify the office responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 1404 Administrative Proceedings
Each Party shall ensure in its administrative proceedings applying to any measure referred to in Article 1402 that:
wherever possible, persons of the other Party who are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issues in question; such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions before any final administrative action, when time, the nature of the proceeding and the public interest permit; and its procedures are in accordance with domestic law.

Article 1405 Review and Appeal
A Party shall ensure that, where warranted, appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for prudential reasons, regarding matters covered by this Chapter, that:
provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
provide parties to any proceeding with a reasonable opportunity to present their respective positions;
provide parties to any proceeding with a decision based on the evidence and submissions of record, or, where required by domestic law, the record compiled by the administrative authority; and
ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

CHAPTER 18 - CONSULTATIONS AND DISPUTE SETTLEMENT

Article 1801 Scope
This Chapter shall apply to the avoidance and settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement except for Chapter 6, Chapter 12 and Chapter 15. In relation to Chapter 11, this Chapter shall only apply to Article 1102. Subject to Paragraph 4, nothing in this Chapter shall affect the rights of the Parties to have recourse to a dispute settlement procedure available under any other international agreement to which they are parties.

If a Party decides to have recourse to a dispute settlement procedure under another international agreement, it shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.

Once a dispute settlement procedure has been initiated between the Parties with respect to a particular dispute under this Chapter or under any other international agreement to which the Parties are parties, that procedure shall be used to the exclusion of any other procedure for that particular dispute. This paragraph does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute. Paragraph 4 shall not apply where the Parties expressly agree to have recourse to dispute settlement procedures under this Chapter and another international agreement. For the purposes of this Article, a dispute settlement procedure under the WTO Agreement shall be regarded as initiated by a Party's request for a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 1802 Consultations
A Party shall accord adequate opportunity for consultations requested by the other Party with respect to any matter affecting the interpretation, implementation or application of this Agreement.

If a request for consultations is made, the Party to which the request is made shall reply to the request within seven days after the date of its receipt and shall enter into consultations within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations of any matter raised in accordance with this Article.

Article 1803 Good Offices, Conciliation and Mediation
The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time. Good offices, conciliation or mediation may continue while procedures of an arbitral tribunal established in accordance with this Chapter are in progress.

Article 1804 Request to Establish an Arbitral Tribunal
If the consultations referred to in Article 1802 fail to settle a dispute within 60 days of the date after receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to establish an arbitral tribunal.

The request to establish an arbitral tribunal shall identify:
the specific measures at issue;
the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
the factual basis for the complaint.

Article 1805 Establishment of an Arbitral Tribunal
An arbitral tribunal shall consist of three members. Each Party shall appoint a member within 30 days after the receipt of the request under Article 1804. The two members appointed shall, within 30 days after the appointment of the second of them, designate by common agreement the third member.

The Parties shall, within seven days after the date of the designation of the third member, approve or disapprove the appointment of that member, who shall, if approved, chair the tribunal.

If the third member has not been designated within 30 days after the date of the appointment of the second member, or if one or both of the Parties disapproves the appointment of the third member, the Parties shall consult each other in order to jointly appoint within a further period of 30 days the chair of the arbitral tribunal.

An arbitral tribunal shall be regarded as established on the day on which the appointment of the third member of the tribunal has been approved or agreed by the Parties in accordance with this Article.

If a member appointed under this Article resigns or becomes unable to act, a successor member shall be appointed in the same manner as prescribed for the appointment of the member being replaced and the successor shall have all the powers and duties of the member being replaced.

A person appointed as a member of an arbitral tribunal:
shall have expertise or experience in law, international trade, other matters covered by this Agreement or the settlement of disputes arising under international trade agreements;
shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence; and
shall be independent of, and not be affiliated with or take instructions from, either Party.

A person appointed as chair of an arbitral tribunal shall not be a national of, nor have his or her usual place of residence in the territory of, nor be employed by, either Party nor have dealt with the dispute in any capacity.

Article 1806 Functions of Arbitral Tribunals
An arbitral tribunal established under Article 1804:

shall consult the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory settlement of the dispute;
shall make its award in accordance with this Agreement and applicable rules of international law;
shall set out, in its award, its findings of law and fact, together with its reasons; and
may, in addition to its findings of law and fact, include in its award options for the Parties to consider in implementing the award.

The award of an arbitral tribunal shall be final and binding on the Parties. An arbitral tribunal shall attempt to make its decision, including its award, by consensus but may also make such decisions by majority vote.

Article 1807 Proceedings of Arbitral Tribunals
An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by an arbitral tribunal to appear before it.

The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall not

disclose information submitted by the other Party to an arbitral tribunal which the latter Party has designated as confidential.

The Parties shall transmit to the tribunal written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:
for the Party which requested the establishment of the arbitral tribunal, within 21 days after the date of the establishment of that tribunal; and
for the other Party, within 21 days after the date of the transmission of the written submission of the Party which requested the establishment of the arbitral tribunal.

At its first substantive meeting with the Parties, an arbitral tribunal shall ask the Party which requested the establishment of the tribunal to present its submission. At the same meeting, the arbitral tribunal shall ask the other Party to present its submission.

Formal rebuttals shall be made at the second substantive meeting of an arbitral tribunal. The Party which did not request the establishment of the tribunal shall have the right to present its submission first. Before the meeting, the Parties shall submit written rebuttals to the tribunal.

An arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting or in writing.

The Parties shall make available to an arbitral tribunal a written version of their oral statements.

The submissions, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Each Party's written submissions, including any comments on the draft award made in accordance with Article 1809 (2), written versions of oral statements and responses to questions put by an arbitral tribunal, shall be made available to the other Party.

An arbitral tribunal shall have no ex parte communications concerning a dispute it is considering.

At the request of a Party, or on its own initiative, an arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may set. This paragraph does not apply to information and technical advice provided by any person or body as part of the submissions referred to in paragraphs 4 to 6.

An arbitral tribunal shall, in consultation with the Parties, regulate its own procedures governing the rights of Parties to be heard and its own deliberations where such procedures are not otherwise set out in this Chapter.

Article 1808 Suspension or Termination of Proceedings
Where the Parties agree, an arbitral tribunal may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitral tribunal has been suspended for more than 12 months, the tribunal's authority for considering the dispute shall lapse unless the Parties agree otherwise.

The Parties may agree at any time to terminate the proceedings of an arbitral tribunal established under this Agreement by jointly notifying the chair of that arbitral tribunal.

An arbitral tribunal may, at any stage of the proceedings prior to release of its final award, propose that the Parties seek to settle the dispute amicably.

Article 1809 Awards of Arbitral Tribunals
Unless the Parties otherwise agree, an arbitral tribunal shall base its award on the submissions and arguments of the Parties and on any information it has obtained in accordance with Article 1807 (10).

An arbitral tribunal shall prepare a draft award and accord adequate opportunity for the Parties to review this draft. The Parties may submit to the tribunal written comments on the draft award within 14 days after the date of its receipt. The tribunal shall consider any comments received from the Parties in finalising its award.

An arbitral tribunal shall release to the Parties its final award on a dispute within 120 days after the date of its establishment. If the tribunal considers it cannot release its final award within 120 days, it shall inform the Parties in writing of the reasons for the delay, together with an estimate of the period within which it will issue its award.

The final award of an arbitral tribunal shall become a public document within 10 days of its release to the Parties.

Article 1810 Implementation
The Parties shall promptly comply with an award of an arbitral tribunal.

A Party shall notify the other Party in writing of any action it proposes to take to implement an award of an arbitral tribunal within 30 days after the date of the receipt of the final award by the Parties.

If a Party considers that prompt compliance with an award of an arbitral tribunal is impracticable, or if a Party which requested the establishment of an arbitral tribunal considers that an action proposed or subsequently taken by the other Party does not implement the award of the tribunal, the Parties shall immediately enter into consultations with a view to developing a mutually acceptable resolution, such as compensation or any alternative arrangement and agreeing on a reasonable period to implement any such resolution. Compensation and any alternative arrangement are temporary measures, neither of which is preferred to full implementation of the original award.

Article 1811 Compensation and Suspension of Benefits
If the Party which requested the establishment of an arbitral tribunal has not received any notice from the other Party under Article 1810 (2); or
the Parties are unable to agree on a mutually acceptable resolution under Article 1810 (3) within 30 days of the commencement of consultations under Article 1810 (3); or
the Parties have agreed on a mutually acceptable resolution under Article 1810 (3) and the Party which requested the establishment of the arbitral tribunal considers that the other Party has failed to observe the terms of such agreement,
the Party which requested the establishment of an arbitral tribunal may at any time thereafter provide written notice to the other Party that it intends to suspend the application of benefits of equivalent effect to the non-conformity found by the tribunal. The notice shall specify the level of benefits that the Party proposes to suspend. The Party which requested the establishment of an arbitral tribunal may begin suspending benefits 30 days after the date on which it provides notice to the other Party.

In considering what benefits to suspend under this Article:
the Party which requested the establishment of an arbitral tribunal shall first seek to suspend the application of benefits in the same sector or sectors as affected by the matter that the tribunal has found to be inconsistent with this Agreement;
the Party which requested the establishment of an arbitral tribunal may suspend the application of benefits in other sectors if it considers that it is not practicable or effective to suspend the application of benefits in the same sector; and
the Party which requested the establishment of the arbitral tribunal shall aim to ensure that the level of suspension of benefits is of equivalent effect to the non-conformity found by the tribunal.

Any suspension of benefits under this Article shall be temporary and shall only be applied until such time as the Party that must implement an arbitral tribunal's award has done so, or until a mutually satisfactory solution is reached.

If the Party complained against considers that:
the level of benefits that the other Party has proposed to suspend under paragraph 2 is excessive; or
it has eliminated the non-conformity found by the tribunal it may, within 30 days after the other Party provides notice under Paragraph 1, request that the tribunal be reconvened to consider this matter. The Party complained against shall deliver its request in writing to the other Party. The tribunal shall reconvene within 30 days after delivery of the request to the other Party and shall present its determination to the Parties within 90 days after it reconvenes. If the tribunal determines that the level of benefits proposed to be or actually suspended is excessive, it shall determine the level of benefits it considers to be of equivalent effect to the non-conformity found by the tribunal, adjusted to reflect any loss sustained by a Party as a result of excessive suspension.

The compliance tribunal's award shall be final and binding on the Parties.

Article 1812 Expenses
Each Party shall bear the costs of its appointed member and its own expenses. The costs of the chair of an arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

Article 306 Review and Appeal
Each Party shall provide easily accessible processes for administrative and judicial review of decisions taken by its customs administration.

Requests for review of decisions taken by the customs administration of a Party shall be made in writing or electronically, and shall be accompanied by any information deemed useful to comply with the request.

Article 414 Review and Appeal
The importing Party shall grant the right of appeal in matters relating to eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its laws and regulations.

Article 1207 Transparency
The Parties shall publish or otherwise make publicly available their laws promoting fair competition and their laws addressing anti-competitive practices.

Article 1405 Review and Appeal
A Party shall ensure that, where warranted, appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for prudential reasons, regarding matters covered by this Chapter, that:

provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
provide parties to any proceeding with a reasonable opportunity to present their respective positions;
provide parties to any proceeding with a decision based on the evidence and submissions of record, or, where required by domestic law, the record compiled by the administrative authority; and
ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

CUSTOMS PROCEDURES/TRADE FACILITATION

Article 303 Customs Valuation
The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the WTO Customs Valuation Agreement.

Article 309 Paperless Trading and Use of Automated Systems
The customs administrations of both Parties, in implementing initiatives which provide for the use of paperless trading, shall take into account the methods agreed in APEC and the World Customs Organization. The customs administration of each Party shall work towards having electronic means for all its customs reporting requirements as soon as practicable. The introduction of information technology shall, to the greatest extent possible, be carried out in consultation with all relevant parties directly affected.

Article 310 Risk Management
The Parties shall administer customs procedures at their respective borders so as to facilitate the clearance of low-risk goods and focus on high-risk goods. The Parties shall apply and develop further risk management techniques in the performance of their customs procedures.

TECHINCAL STANDARDS

Article 703 Scope and Obligations
The Parties affirm with respect to each other their existing rights and obligations relating to technical regulations under the WTO Agreement on Technical Barriers to Trade and all other international agreements, including environmental and conservation agreements, to which the Parties are party.

Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations, and conditions set out in the WTO Agreement on Technical Barriers to Trade:

technical regulations necessary to ensure its national security requirements; and
technical regulations necessary for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfill other legitimate objectives, as specified in the WTO Agreement on Technical Barriers to Trade.

Each Party shall retain all authority under its laws to implement its technical regulations. This includes the authority to take appropriate measures for goods that do not conform to the Party's technical regulations. Such measures may include withdrawing goods from the market, prohibiting their placement on the market or restricting their free movement, initiating a product recall or prohibiting an import.

The Parties affirm their intention to adopt and to apply, with such modifications as may be necessary, the principles set out in the APEC Information Notes on Good Regulatory Practice in Technical Regulation with respect to conformity assessment and approval procedures in meeting their international obligations under the WTO Agreement on Technical Barriers to Trade.

Article 704 Origin
This Chapter applies to all goods traded between the Parties, regardless of the origin of those goods, unless otherwise specified by any technical regulations of a Party.

SANITARY AND PHYTOSANITARY MEASURES AND FOOD STANDARDS

Article 601 Objectives
The objectives of this Chapter are:
to protect human, animal or plant life or health in the territory of each Party;
to facilitate safe bilateral trade in food, plants and animals, including their products, and animal feed;
to strengthen cooperation between Australian and Thai government agencies having responsibility for matters covered by this Chapter and to deepen mutual understanding of each Party's regulations and procedures; and
to strengthen collaboration between the Parties in relevant international bodies implementing agreements or developing international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

Article 602 Definitions
For the purposes of this Chapter:
"agricultural and food standard" means a mandatory requirement being either a sanitary or phytosanitary measure or other technical regulation, that is made pursuant to relevant laws administered by either Party;
"sanitary or phytosanitary measure"(SPS measure) shall have the same meaning as in Annex A, paragraph 1, of the SPS Agreement; sanitary or phytosanitary measures include control, inspection and approval procedures, guidelines for use of which are given in Annex C of the SPS Agreement;
"technical regulation" means a non-SPS measure which shall have the same meaning as in Annex 1 of the TBT Agreement; and
"appropriate level of sanitary or phytosanitary protection" shall have the same meaning as in Annex A of the SPS Agreement.

Article 603 Scope
This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade in agricultural and food products traded between the Parties, regardless of the origin of those products.

It shall also apply to:
all other agricultural and food standards related to agricultural and food products traded between the Parties;
assessments of manufacturers or manufacturing processes of agricultural and food products exported from one Party to the other Party; and
assessments of official control, inspection and approval systems related to agricultural and food products operated by the Parties.

Article 604 Obligations
The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement and the TBT Agreement to the extent that these rights and obligations are applicable to trade in agricultural and food products.
Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations:

SPS measures necessary to achieve its appropriate level of protection of human, animal or plant life or health; and
other technical requirements set out in a Party's laws, regulations and policies as appropriate to its national circumstances.

Each Party, consistent with Paragraphs 1 and 2, shall retain all authority under its laws to implement sanitary and phytosanitary measures and other standards related to this Chapter. This includes the authority to take appropriate measures for goods that do not conform to that Party's SPS measures and such other standards.

Article 605 Harmonisation
Noting their commitments under Article 604 (1), the Parties shall endeavour to work towards harmonisation of sanitary and phytosanitary measures and other agricultural and food standards, on as wide a basis as possible, as provided for under Article 3 of the SPS Agreement and Article 2 of the TBT Agreement.

Harmonisation shall be pursued without requiring either Party to change its appropriate level of protection of human, animal or plant life or health, that the Party determines to be appropriate in accordance with the relevant provisions of Article 5 of the SPS Agreement.

Article 606 Equivalence
The Parties recognize that the principle of equivalence as set down in Article 4 of the SPS Agreement and Article 2 of the TBT Agreement, as applied to SPS measures and other agricultural and food standards, has mutual benefits for both exporting and importing countries.

The Parties shall follow the procedures for determining the equivalence of SPS measures and other agricultural and food standards, including control, inspection and approval procedures, developed by the relevant WTO bodies and the Codex Alimentarius Commission, the Office Internationale des Epizooties and the International Plant Protection Convention, as amended from time to time.

Compliance by an exported food product with a food standard that has been accepted as equivalent to a food standard of the importing Party shall not remove the need for that product to comply with any other relevant mandatory requirements of the importing Party.

Article 607 Control, Inspection and Approval Procedures
The Parties recognise that they operate different systems for giving effect to their international rights and obligations relating to control, inspection and approval procedures.

Each Party shall, on the request of the other Party, following the procedures set down from time to time by the relevant WTO bodies and the Codex Alimentarius Commission, the Office Internationale des Epizooties or the International Plant Protection Convention, give consideration to accepting the relevant control, inspection and approval procedures of the other Party, provided that it is satisfied that these achieve the same outcomes as its own regulatory requirements.

Each Party shall on request and in accordance with its international obligations and applicable laws, regulations and policies, review its inspection, testing, certification and other relevant import and export approval systems or procedures to ensure these are reasonable and necessary, so as to further facilitate access of traded goods to its territory and minimise the costs of doing business.

The Parties shall cooperate on a product trace back system for the notification of non-compliance of imported consignments for commodities subject to SPS measures or other agricultural and food standards requirements, drawing on the guidelines of relevant international organisations where available.

In particular: where non-compliance with SPS measures or other agricultural and food standards arises, the importing Party shall notify the exporting Party of the consignment details;
unless specifically required by laws, regulations or policies in effect at the time this Agreement enters into force, the importing Party shall avoid suspending trade based on one shipment, but in the first instance shall contact the exporting Party to ascertain how the problem has occurred. The Parties shall consult on what remedial action might be taken by the exporting Party to ensure that further shipments are not affected;

the exporting Party shall investigate and advise the importing Party of its findings regarding the non-compliance referred to in Sub-paragraph (a), including any corrective action that will apply to future shipments. The Parties shall, upon the request of either Party, jointly examine the import or export control, inspection and approval procedures concerned; and if, after investigation and review, the Parties mutually determine that the issue is an incident arising from an isolated technical problem, the importing Party shall separate the incident clearly from the overall institutional and procedural arrangements applying to relevant control, inspection and approval systems. In this event, the importing Party shall confine any treatment measures taken only to that particular shipment and shall also endeavour to ensure that the incident is not used as a basis for refusing to accept the arrangements applying to other shipments of the products concerned.

Article 608 Information Exchange and Cooperation
Recognising the importance of close and effective working relationships between the Parties' regulatory and other relevant agencies in giving effect to the objectives of this Chapter, the Parties shall enhance their consultation processes in order to facilitate cooperation.

In particular, each Party shall: establish an overall coordination contact point, as well as contact points for relevant specialised areas, to disseminate and exchange information expeditiously and to facilitate timely and favourable consideration of requests for information or clarification from the other Party. The overall coordination contact point shall be included in all consultations made pursuant to this Article;
provide notice to the relevant contact points of the other Party of new or proposed changes to its SPS measures and other agricultural and food standards, as far in advance as practicable before the changes come into effect, where these are likely to affect, directly or indirectly, trade between the Parties;
where considerations of public, animal or plant health and safety warrant more urgent action, notify the other Party no later than the date the changes enter into force;
where it implements emergency management measures in response to a confirmed threat to human, plant or animal life or health, ensure that all pertinent information about the incident is provided to the other Party and the Parties shall consult expeditiously with the aim of minimising disruption to trade.

The Parties shall explore opportunities for further cooperation and collaboration on regulatory issues at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter.

The Parties shall enhance cooperation on priority proposals in relevant areas of technical assistance and capacity-building activities to ensure that existing or future opportunities for funding or other support are used effectively to further the objectives of this Chapter.

Article 609 Consultative Forum on Sanitary and Phytosanitary Measures and Food Standards
The Parties shall establish an Expert Group on Sanitary and Phytosanitary Measures and Food Standards as a consultative forum to promote the objective set out in Article 601 (c) and to reflect their commitments under Article 608 (1) to strengthen cooperation between regulatory agencies having responsibility for sanitary and phytosanitary measures and for food standards.

The Expert Group, along with the existing Joint Working Group on Agriculture, shall together form an integrated means of enhanced regular and comprehensive consultation and cooperation on agriculture and related matters so as to facilitate safe trade between the Parties.

The Expert Group shall meet as often as required and mutually determined by the Parties, but this shall not be less than once a year. In principle, the Parties shall meet biannually during the initial two year work program of the Expert Group.

The Expert Group shall meet consecutively with the regular meetings of the Joint Working Group, alternately in each Party's territory.

The Parties may mutually determine an alternative process for addressing any matter and for this purpose shall make full use of the coordination and contact points established under Article 608 (2)(a).

The Expert Group may adopt a work program and work procedures independently of the established scope and modalities of the Joint Working Group. The Expert Group shall inform the Joint Working Group of the outcomes from its meetings.

The Expert Group may establish temporary task forces to address particular issues.

The Party hosting the Expert Group shall provide the chair for the meeting who shall be a representative from the agriculture ministry of the relevant Party. Delegations to the Expert Group may be composed of relevant technical and policy officials or other designated officials as each Party determines appropriate from time to time. Each Party shall ensure, reflecting the agenda agreed for each meeting, that appropriate representatives with responsibility for SPS measures and food standards participate in meetings of the Expert Group.

The Parties shall consult on dates and venues for planned meetings of the Expert Group and Joint Working Group well in advance. Agendas for meetings of the Expert Group shall be mutually determined at least 30 days prior to each meeting. To achieve the objectives of Paragraph 2 on matters related to this Chapter, the Expert Group shall at its first meeting develop and implement a work program, with the initial phase to be completed and reviewed within two years of the signature of this Agreement, with the aim of:
reviewing progress and monitoring the implementation of this Chapter on an ongoing basis;
enhancing mutual understanding of each Party's sanitary and phytosanitary measures, agricultural and food standards, and related regulatory processes;
consulting on matters related to the development or application of SPS measures and other agricultural and food standards that affect or may affect trade between the Parties;
reviewing and assessing progress of each Party's priority market access interests, which at the time of signature of this Agreement are listed in Annex 6.1;
consulting on requests for recognition of equivalence of SPS measures or other agricultural and food standards. In respect of control, inspection and approval arrangements, the priority sectors of each Party at the time of signature of this Agreement are listed in Annex 6.2;
consulting on matters relating to the harmonisation of standards;
consulting or coordinating positions on matters related to meetings of the WTO SPS Committee, the Codex Alimentarius Commission, the Office Internationale des Epizooties, the International Plant Protection Convention or other forums dealing with human, plant or animal health;
coordinating and prioritising capacity building and technical cooperation programs related to SPS measures and other relevant agricultural and food standards; and progressing resolution of disputes that arise in connection with the matters covered by this Chapter.

Article 610 Dispute Settlement
Matters arising under this Chapter that cannot be settled through consultations within the Expert Group established under Article 609 may be forwarded by either Party for consideration by the FTA Joint Commission. Chapter 18 shall not apply to the provisions of this Chapter.

INTELLECTUAL PROPERTY RIGHTS

Article 1301 Objective
The objective of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.

"Intellectual property rights" refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, and lay-out designs (topographies) of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 1302 Observance of International Obligations
The Parties shall fully respect the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and any other multilateral agreement relating to intellectual property to which both are parties.

Article 1303 Measures to Prevent the Export of Goods that Infringe Copyright or Trade Marks
Each Party, on receipt of information or complaints, shall take measures to prevent the export of goods that infringe copyright or trade marks, in accordance with its laws, regulations, or policies.

Article 1304 Cooperation on Enforcement
The Parties shall cooperate with a view to eliminating trade in goods infringing intellectual property rights, subject to their respective laws, regulations, or policies. Such cooperation may include:

the notification of contact points for the enforcement of intellectual property rights;
the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning the infringement of intellectual property rights;
policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora; and
such other activities and initiatives for the enforcement of intellectual property rights as may be mutually determined by the Parties.

Article 1305 Other Cooperation
The Parties, through their competent agencies, shall:
exchange information and material on programs pertaining to education in and awareness of intellectual property rights, and to commercialisation of intellectual property, to the extent permissible under their respective laws, regulations and policies; and
encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organisations and other entities concerning the protection and development of intellectual property rights with a view to:
improving and strengthening the intellectual property administrative systems in areas such as patents examination and trademarks registration;
stimulating the creation and development of intellectual property by persons of each Party, particularly individual inventors and creators as well as small to medium-sized enterprises (SMEs); and
enhancing the capacity of and opportunity for the owners of intellectual property rights to obtain the maximum utilisation and commercial benefits from those rights.

MARKET ACCESS OF TRADE IN GOODS

Chapter 2 - Trade in Goods, Article 201, Scope
Except as otherwise provided, this Chapter applies to trade in goods of a Party.

Article 202 National Treatment
Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994.

Article 203 Elimination of Customs Duties
The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territory of the Parties.

A Party shall not increase an existing customs duty or introduce a new customs duty on imports of an originating good. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its Tariff Schedule at Annex 2. The base rate and the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule. Reductions shall occur upon entry into force of the Agreement and thereafter on 1 January of each year, as provided for in each Party's Schedule.

Each Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff quota set out in its Schedule, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff quota.

On the written request of the other Party, a Party applying or intending to apply measures pursuant to Paragraph 4 shall consult to consider a review of the administration of those measures.

FINANCIAL SERVICES
(blank)

TELECOMMUNICATION SERVICES

Chapter 8 - Trade in Services
Part I - Objectives, Definitions And Scope
Part V - Progressive Liberalisation And Development Of Rules

Article 812 Review of Commitments
In pursuance of the objectives of this Chapter, the Parties shall enter into further negotiations on trade in services within three years from the date of entry into force of this Agreement with the aim of enhancing the overall commitments undertaken by the Parties under this Agreement.

In negotiating further commitments in accordance with this Article, the Parties shall recognise the provisions of Article V (1) and (3) of GATS.

If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement.

If, after this Agreement enters into force, a Party further liberalises any of its services sectors, sub-sectors or activities, it shall consider a request by the other Party for the incorporation in this Agreement of the unilateral liberalisation.
If, after this Agreement enters into force, a service previously supplied in the exercise of governmental authority is subsequently supplied on a commercial basis or in competition with one or more service suppliers, the Party concerned shall consider a request by the other Party for the incorporation in this Agreement of new commitments relating to that service.

EXPRESS DELIVERY SERVICES
(blank)

CHAPTER 10 - MOVEMENT OF NATURAL PERSONS

Article 1001 Objectives
The objectives of this Chapter are:
to provide for rights and obligations additional to those set out in Chapter 8 and Chapter 9 in relation to the movement of natural persons between the Parties; and
to enhance the mobility of natural persons of either Party engaged in the conduct of trade and investment between the Parties, by facilitating temporary business entry and establishing simplified and transparent immigration formalities for business persons.

Article 1002 Definitions
For the purposes of this Chapter:

“business visitor” means a natural person of either Party who is: a service seller; an investor of a Party, or a representative of an investor, seeking temporary entry to establish an investment; or seeking temporary entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sales to the general public;

“contractual service supplier” means a natural person of a Party who satisfies any requirements under the laws, regulations and policies of the other Party or satisfies any recognition of standards requirements or criteria agreed by the Parties to provide such services in the territory of that Party, and: is an employee of a service supplier or a juridical person of a Party not having a commercial presence or investment in the other Party, which has concluded a service contract with a juridical person registered and engaged in substantive business operations in the other Party; or
is a national of a Party and employed under an employment contract by a juridical person registered and engaged in substantive business operations in the other Party; and is seeking temporary entry to provide a service as a manager, executive or specialist;

“executive” means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision making, and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service or the operation of an investment;

“immigration formality” means a visa, work permit, or other document or electronic authority granting a natural person of one Party the right to reside or work in the territory of the other Party;

“intra-corporate transferee” means an employee of a service supplier, investor or juridical person of a Party established in the territory of the other Party through a branch or affiliate, and who is a manager, executive or specialist;

"manager" means a natural person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor unless the employees supervised are professionals;

"service seller" means a natural person of a Party who is a sales representative of a service supplier of that Party and is seeking temporary entry to the other Party for the purpose of negotiating the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly;

"specialist" means a natural person within an organisation who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organisation's service, research equipment, techniques, or management; or a natural person with high-level technical or professional qualifications and skills and experience; and

"temporary entry" means entry by a business visitor, or an intra-corporate transferee, or a contractual service supplier as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or juridical person which employs that visitor in the visitor's home country.

Article 1003 Scope
This Chapter shall apply to measures affecting the movement of natural persons of a Party into the territory of the other Party where such persons are:

contractual service suppliers of the first Party;
intra-corporate transferees of the first Party;
service sellers of the first Party;
investors of the first Party in respect of an investment of that investor in the territory of the other Party; or
natural persons employed by an investor of the first Party in respect of an investment of that investor in the territory of the other Party.

This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.

Article 1004 Short-Term Temporary Entry
A Party shall, upon application by a business visitor of the other Party who meets its criteria for the grant of an immigration formality, grant that business visitor, through the issue of an immigration formality, the right to temporary entry in the granting Party's territory for a period of up to 90 days.

Article 1005 Long-Term Temporary Entry
A Party shall, in accordance with commitments in Annex 8, grant temporary entry to an intra-corporate transferee or a contractual service supplier of the other Party who meets its criteria for the grant of an immigration formality unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration formality has been refused on such grounds of national security or public order by the granting Party as it deems fit.

Article 1006 Provision of Information
A Party shall publish or otherwise make available to the other Party such information as will enable the other Party to become acquainted with its measures relating to this Chapter.

Article 1007 Immigration Measures
Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Article 1008 Expeditious Application Procedures
A Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof.

TRANSPARENCY

ARTICLE 20.1 : CONTACT POINTS

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

ARTICLE 20.2 : PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such laws, regulations, procedures, and administrative rulings that it proposes to adopt; and
(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

ARTICLE 20.3 : NOTIFICATION AND PROVISION OF INFORMATION

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

3. Any notification, request, or information under this Article shall be provided to the other Party through the relevant contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

ARTICLE 20.4 : ADMINISTRATIVE AGENCY PROCESSES[1]

With a view to administering its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement in a consistent, impartial, and reasonable manner, each Party shall ensure that its administrative agencies, in applying such measures to particular persons, goods, or services of the other Party in specific cases through adjudication, rulemaking, licensing, determination, and approval processes:

> (a) provide, wherever possible, persons of the other Party that are directly affected by an agency's processes reasonable notice, in accordance with domestic procedures,

[1] For avoidance of doubt, "wherever possible" shall not be construed as requiring a Party to provide treatment in relation to persons, goods, or services of the other Party that is more favorable than that which the Party provides to its own persons, goods, or services.

when a process is initiated, including a description of the nature of the relevant process, a statement of the legal authority under which the process is initiated, and a general description of any issues in controversy;

(b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process, and the public interest permit; and

(c) follow procedures that are in accordance with its law.

ARTICLE 20.5 : REVIEW AND APPEAL

1. Each Party shall maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review2 and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by the Party's law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

4. ARTICLE 20.6 : DEFINITIONS

For the purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct, but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

CUSTOMS ADMINISTRATION

ARTICLE 6.1 : PUBLICATION AND NOTIFICATION

1. Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published on the Internet and in print form.

[2] For avoidance of doubt, 'review' includes merits (de novo) review only where provided for under the Party's law.

2. Each Party shall designate one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall make available on the Internet information concerning procedures for making such inquiries.

3. To the extent possible, each Party shall:

(a) publish in advance any regulation governing customs matters that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on the proposed regulation.

ARTICLE 6.2 : ADMINISTRATION

1. Each Party shall administer in a uniform, impartial, and reasonable manner all its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters.

2. Each Party shall ensure that its laws and regulations governing customs matters are not prepared, adopted, or applied with a view to or with the effect of creating arbitrary or unwarranted procedural obstacles to international trade.

ARTICLE 6.3 : ADVANCE RULINGS

1. Each Party shall provide for written advance rulings to be issued to a person described in paragraph 2(a) concerning tariff classification, questions arising from the application of the Customs Valuation Agreement, country of origin, and the qualification of a good as an originating good under this Agreement.

2. Each Party shall adopt or maintain procedures for issuing written advance rulings that:

(a) provide that a potential importer in its territory or an exporter or producer in the territory of the other Party may request a ruling prior to the importation that is the subject of the advance ruling request;

(b) include a detailed description of the information required to process a request for an advance ruling; and

(c) provide that an advance ruling will be based on the facts and circumstances presented by the person requesting the ruling.

3. Each Party shall provide that its customs authorities:

(a) may request, at any time during the course of evaluating a request for an advance ruling, additional information necessary to evaluate the request;

(b) shall issue the advance ruling expeditiously, and no later than 120 days after obtaining all necessary information; and

(c) shall provide a written explanation of the reasons for the ruling.

4. Subject to paragraph 5, each Party shall apply an advance ruling to importations into its territory beginning on the date it issues the ruling or on any other date specified in the ruling. The Party shall apply the treatment provided by the advance ruling to all importations regardless of the importer, exporter, or producer involved, provided that the facts and circumstances are identical in all material respects.

5. A Party may modify or revoke an advance ruling on a determination that the ruling was based on an error of fact or law, or where there is a change in law consistent with this Agreement, a change in a material fact, or a change in the circumstances on which the ruling is based. The issuing Party shall postpone the effective date of any such modification or revocation for at least 60 days where the person to whom the ruling was issued has relied in good faith on that ruling.

ARTICLE 6.4 : REVIEW AND APPEAL

1. With respect to its determinations relating to customs matters, each Party shall provide that importers in its territory have access to:

(a) at least one level of administrative review of determinations by its customs authorities independent of the official or office responsible for the decision under review; and

(b) judicial review of decisions taken at the final level of administrative review.

ARTICLE 6.5 : COOPERATION

1. Each Party shall endeavour to provide the other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall, through their competent authorities and in accordance with this Chapter, cooperate in achieving compliance with their respective laws and regulations pertaining to:

(a) the implementation and operation of this Agreement relating to importation of goods;

(b) restrictions and prohibitions on imports or exports; and

(c) such other issues as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, it may request that the other Party provide the following types of information pertaining to trade transactions relevant to the activity if the activity took place no more than five years before the date of the request, or from the date of discovery of the apparent offence in cases of fraud, and in other cases on which the Parties may agree:

(a) the name and address of the importer, exporter, manufacturer, buyer, vendor, broker, or transporter;

(b) shipping information relating to container number, size, port of loading before arrival, destination port after departure, name of vessel and carrier, the country of origin, place of export, mode of transportation, port of entry of the goods, and cargo description; and

(c) classification number, quantity, unit of measure, declared value, and tariff treatment.

4. The Party shall make its request in writing; shall specify the grounds for reasonable suspicion and the purposes for which the information is sought; and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information. The requesting Party may meet this requirement by, inter alia, identifying the importer, exporter, country of origin, time period, port or ports of entry, cargo description, or Harmonized System number applicable to the importation or exportation in question.

5. The requested Party shall provide available information that is material to the request.

6. For the purposes of paragraph 3, a Party has a reasonable suspicion of unlawful activity if it is based on one or more of the following types of relevant factual information obtained from public or private sources:

(a) information gathered over time that a specific importer, exporter, manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of the other Party has not complied with its laws or regulations governing importations;

(b) information gathered over time that some or all of the persons involved in the movement of goods within a specific product sector from the territory of one Party to the territory of the other Party have not complied with the Party's laws or regulations governing importations;

(c) information from trade and transit documents and other information necessary to conduct verifications; or

(d) other information that the Parties agree is sufficient in the context of a particular request.

7. Each Party shall endeavour to provide the other Party any other information that would assist it in determining whether imports from or exports to the other Party are in compliance with applicable laws or regulations governing importations, including those related to the prevention or investigation of unlawful shipments.

8. On the request of either Party, the Parties shall enter into consultations to resolve any technical or interpretative difficulties that may arise under this Article or to consider ways to improve cooperation. Such consultations may occur between the competent authorities of the Parties directly or through the Committee on Trade in Goods established in Chapter Two (National Treatment and Market Access of Goods). In addition, either Party may request assistance from the other Party in implementing this Article. The requested Party shall endeavour to respond promptly to the request.

9. The Parties shall also endeavour to provide each other with technical advice and information for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing the technical skills of their personnel, and enhancing the use of technologies that can lead to improved compliance with laws and regulations governing importations.

10. The Parties shall explore additional avenues of cooperation for the purpose of enhancing each Party's ability to enforce its laws or regulations governing importations, including by examining the establishment and maintenance of additional channels of communication to facilitate the secure and rapid exchange of information, and by considering efforts to improve effective coordination on importation issues, building on the mechanisms established in this Article and the cooperation established under any other relevant agreements.

ARTICLE 6.6 : CONFIDENTIALITY

Each Party shall treat information provided pursuant to this Chapter in accordance with Article 22.4 (Disclosure of Information).

ARTICLE 6.7 : PENALTIES
Each Party shall adopt or maintain measures that provide for the imposition of civil or administrative penalties and, where appropriate, criminal penalties for violations of its customs laws and regulations governing classification, valuation, country of origin, and eligibility for preferential treatment under this Agreement.

ARTICLE 6.8 : RELEASE AND SECURITY
1. Each Party shall adopt or maintain procedures:

(a) providing for the release of goods within a period no greater than that required to ensure compliance with its customs laws;

(b) allowing, to the extent possible, goods to be released within 48 hours of arrival;

(c) allowing, to the extent possible, goods to be released at the point of arrival, without interim transfer to customs warehouses or other locations; and

(d) allowing importers who have complied with the procedures that the Party may have relating to the determination of value and payment of customs duty to withdraw goods from customs, although the Party may require importers to provide security as a condition for the release of goods when such security is required to ensure that obligations arising from the entry of the goods will be fulfilled.

2. Each Party shall:

(a) adopt procedures allowing importers:

(i) to provide security such as bank guarantees, bonds, or other non-cash financial instruments;
(ii) that regularly enter goods to provide security such as standing bank guarantees, continuous bonds, or other non-cash financial instruments covering multiple entries; and
(iii) to provide security in any other forms specified by its customs authorities; and

(b) ensure that the amount of any security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled, and, where applicable, shall not be in excess of the amount chargeable, based on tariff rates under domestic and international law, including this Agreement, and based on valuation in accordance with the Customs Valuation Agreement; and

(c) ensure that any security is discharged as soon as possible after its customs authorities are satisfied that the obligations arising from the importation of the goods have been fulfilled.

ARTICLE 6.9 : RISK ASSESSMENT
Each Party shall employ risk management systems that enable its customs authorities to concentrate inspection activities on high-risk goods and that facilitate the movement of low-risk goods, including systems that allow for information regarding an importation to be processed before the goods arrive.

ARTICLE 6.10 : EXPRESS SHIPMENTS
Each Party shall adopt or maintain separate, expedited customs procedures for express shipments, while maintaining appropriate customs control and selection, including procedures:

(a) under which the information necessary for the release of an express shipment may be submitted and processed by the Party's customs authorities before the shipment arrives;

(b) allowing a shipper to submit a single manifest covering all goods contained in a shipment transported by the express shipment service through, if possible, electronic means;

(c) that, to the extent possible, minimise the documentation required for the release of express shipments; and

(d) that, under normal circumstances, allow for an express shipment that has arrived at a point of entry to be released no later than six hours after the information necessary for release is submitted.

ARTICLE 6.11 : DEFINITION OF CUSTOMS MATTERS
For the purposes of this Chapter, customs matters means matters pertaining to the classification and valuation of goods for customs duty purposes, rates of duty, country of origin, and eligibility for preferential treatment under this Agreement, and all other procedural and substantive requirements, restrictions, and prohibitions that a Party maintains on imports or exports, including those pertaining to goods imported or exported by or on behalf of travelers. Customs matters do not include matters pertaining to antidumping or countervailing duties.

ESTABLISHMENT OF A FREE TRADE AREA AND DEFINITIONS

ARTICLE 1.1 : GENERAL
1. The Parties to this Agreement, consistent with Article XXIV of GATT 1994 and Article V of GATS, hereby establish a free trade area in accordance with the provisions of this Agreement.
2. The Parties affirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.

TECHNICAL BARRIERS TO TRADE

ARTICLE 8.1 : SCOPE AND COVERAGE
This Chapter applies to all standards, technical regulations, and conformity assessment procedures of the central government that may, directly or indirectly, affect trade in any product between the Parties, except:

(a) technical specifications prepared by government bodies for the production or consumption requirements of such bodies; and
(b) sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

ARTICLE 8.2 : AFFIRMATION OF THE TBT AGREEMENT
Further to Article 1.1.2, the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

ARTICLE 8.3 : REGIONAL GOVERNMENTS
Each Party shall provide information to authorities of regional governments to encourage their adherence to this Chapter, as appropriate.

ARTICLE 8.4 : INTERNATIONAL STANDARDS
1. Each Party shall use relevant international standards, to the extent provided in Article 2.4 of the TBT Agreement, as a basis for its technical regulations.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in Decisions and Recommendations adopted by the Committee since 1January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall consult and exchange views on matters under discussion in relevant international or regional bodies that develop standards, guidelines, recommendations, or policies relevant to this Chapter.

ARTICLE 8.5 : TECHNICAL REGULATIONS

1. Each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfill the objectives of its regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its reasons. The Parties will, if they so agree, give further consideration to whether a Party should accept a particular regulation as equivalent to its own and consider establishing an ad hoc working group, as provided for in Article 8.9.3, for this purpose.

3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

ARTICLE 8.6 : CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. For example:

(a) the importing Party may rely on a supplier's declaration of conformity;
(b) conformity assessment bodies located in each Party's territory may enter into voluntary arrangements to accept the results of each other's assessment procedures;
(c) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
(d) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
(e) a Party may designate conformity assessment bodies located in the territory of the other Party; and
(f) a Party may facilitate the consideration of a request by the other Party to recognize the results of conformity assessment procedures conducted by bodies in the other Party's territory, including through negotiation of agreements in a sector nominated by that other Party.

The Parties shall exchange information on these and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognize a body assessing

conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision.

4. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision. The Parties will, if they so agree, give further consideration with respect to this matter and consider establishing an ad hoc working group, as provided for in Article 8.9.3, for this purpose.

ARTICLE 8.7 : TRANSPARENCY

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures on terms no less favorable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for persons to provide comments on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, it shall:

> (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
>
> (b) transmit the proposal electronically to the other Party through the enquiry point the Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.
> Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

4. Each Party shall publish, or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from the public or the other Party under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party electronically through the enquiry point referenced in subparagraph 3(b).

6. On request of the other Party, a Party shall provide the other Party information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

ARTICLE 8.8 : TRADE FACILITATION

1. The Parties shall work cooperatively in the fields of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify trade facilitating bilateral initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as cooperation through recognition of conformity assessment procedures.

2. At the request of the other Party, a Party shall encourage non-governmental bodies in its territory to cooperate with the non-governmental bodies in the territory of the other Party with respect to particular standards or conformity assessment procedures

ARTICLE 8.9 : CHAPTER COORDINATORS

1. In order to facilitate implementation of this Chapter and cooperation between the Parties, each Party shall designate a Chapter Coordinator who shall be responsible for coordinating with interested persons in the Party's territory and communicating with the other Party's Coordinator in all matters pertaining to this Chapter. The Coordinators' functions shall include:

(a) monitoring the implementation and administration of this Chapter;
(b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
(d) exchanging information on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
(e) facilitating the consideration of any sector-specific proposal a Party makes for further cooperation between conformity assessment bodies, both governmental and nongovernmental, in the territories of the Parties ;
(f) facilitating the consideration of a request that a Party recognize the results of conformity assessment procedures conducted by bodies in the other Party's territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;
(g) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
(h) on request of a Party, consulting on any matter arising under this Chapter; and (i) reviewing this Chapter in light of any developments under the TBT Agreement and developing recommendations for amendments to this Chapter in light of those developments.

2. The Coordinators shall communicate with one another by any agreed method that is appropriate for the efficient and effective discharge of their functions.

3. Where a matter covered under this Chapter cannot be clarified or resolved through the Chapter Coordinators, the Parties may establish an ad hoc technical working group with a view to identifying a workable and practical solution that would facilitate trade. A working group shall comprise representatives of the Parties and may include regional government representatives, where appropriate, with responsibility for the standards, technical regulations, or conformity assessment procedures in question. Where a Party declines a request from the other Party to establish a working group, it shall, on request, explain the reasons for its decision.

ARTICLE 8.10 : INFORMATION EXCHANGE

Any information or explanation that is provided on request of a Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period of time.

ARTICLE 8.11 : DEFINITIONS

For the purposes of this Chapter:
technical regulation, standard, and conformity assessment procedures shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

ANNEX 8-A
CHAPTER COORDINATOR
For the purposes of Article 8.9, Chapter Coordinators shall be:

(a) in the case of Australia, Department of Industry, Tourism and Resources, or its successor; and
(b) in the case of the United States, the Office of the U.S. Trade Representative, or its successor.

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 7.1 : OBJECTIVES
The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

ARTICLE 7.2 : SCOPE AND COVERAGE
1. This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

ARTICLE 7.3 : AFFIRMATION OF THE SPS AGREEMENT
Further to Article 1.1.2, the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

ARTICLE 7.4 : COMMITTEE ON SANITARY AND PHYTOSANITARY MATTERS
1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters ("Committee"), comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. Each Party shall identify its primary representative on the Committee and the Parties shall establish the Committee's operating procedures not later than 30 days after the date of entry into force of this Agreement.

3. The objectives of the Committee shall be to enhance each Party's implementation of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation between the Parties on sanitary and phytosanitary matters, and facilitate trade between the Parties.

4. The Committee shall seek to enhance and complement existing and future relationships between the Parties' agencies responsible for sanitary and phytosanitary matters.

5. The mandate of the Committee shall be to:

(a) enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
(b) improve mutual understanding of specific issues relating to the implementation of the SPS Agreement;
(c) review progress on and, as appropriate, resolve through mutual consent, sanitary and phytosanitary matters that may arise between the Parties' agencies responsible for such matters; and
(d) consult on:

(i) matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;
(ii) issues, positions, and agendas for meetings of the WTO SPS Committee, the Codex Alimentarius Commission and its subsidiary bodies, the International Plant Protection Convention, the International Office of Epizootics, and other international and regional fora on food safety and human, animal, or plant health; and
(iii) technical cooperation activities on sanitary and phytosanitary matters.

6. Each Party shall ensure that the appropriate representatives responsible for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies participate in meetings of the Committee.

7. The Committee shall meet within 45 days after the date of entry into force of this Agreement, and at least once a year thereafter, unless the Parties otherwise agree. The Committee shall inform the Joint Committee established under Article 21.1 (Joint Committee) of the results of each meeting.

8. The Committee shall perform its work in accordance with its operating procedures, which it may revise at any time.

9. The Parties hereby establish a Standing Technical Working Group on Animal and Plant Health Measures, as set out in Annex 7-A.

10. The Committee may establish additional technical working groups in accordance with its mandate.

ARTICLE 7.5 : DEFINITIONS
For the purposes of this Chapter, sanitary or phytosanitary measure means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

7-A-1
ANNEX 7-A
STANDING TECHNICAL WORKING GROUP ON ANIMAL AND PLANT HEALTH MEASURES
SECTION A : ESTABLISHMENT OF THE STANDING TECHNICAL WORKING GROUP ON ANIMAL AND PLANT HEALTH MEASURES

1. The Parties establish a Standing Technical Working Group on Animal and Plant Health Measures ("Working Group"), with a view to facilitating trade between the Parties to the greatest extent possible while preserving each Party's right to protect animal or plant life or health in its territory and respecting each Party's regulatory systems and risk assessment and policy development processes.

2. The Working Group shall be co-chaired by the chief administrators of the Australian Government Department of Agriculture, Fisheries and Forestry's Biosecurity Australia and the United States Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS"), or the respective successor organizations with comparable responsibilities.

3. Members of the Working Group shall include each Party's primary representative on the Committee on Sanitary and Phytosanitary Matters established under Article 7.4 and representatives of appropriate regulatory agencies of each Party.

4. The Working Group shall provide a forum for:

(a) resolving specific bilateral animal and plant health matters with a view to facilitating trade between the Parties and, whenever possible, achieving consensus on scientific issues;
(b) engaging, at the earliest appropriate point in each Party's risk assessment and regulatory processes, in scientific and technical exchange and cooperation regarding animal and plant health matters that may, directly or indirectly, affect the trade of either Party; and
(c) considering specific measures or sets of measures likely to affect, directly or indirectly, trade between the Parties that are designed to protect animal or plant life or health within the territory of the importing Party from risks arising from the entry, establishment, or spread of pests, diseases, disease-carrying organisms or disease-causing organisms.

5. The Working Group shall recognize that each Party's agencies responsible for sanitary and phytosanitary matters are undertaking, at any particular time, a range of risk analyses and policy development work on matters relating to animal and plant health that may be of mutual interest to the Parties. The Working Group shall undertake, as part of its regular agenda, to update its members on the progress of work related to bilateral trade, complementing and without prejudice to exchanges in other fora, including the annual bilateral dialogues between APHIS and Biosecurity Australia on plant and animal health matters.

6. The Working Group shall establish a work program, including issues that shall be the subject of specific work plans, in accordance with Section B of this Annex, taking into account the resource constraints of each Party and the need to develop an agenda that balances the needs of both Parties, including through identifying and addressing the priority needs of each Party.

7. The Working Group shall establish operating procedures within 45 days of the date of entry into force of this Agreement.

8. The co-chairs may agree to appoint sub-groups that include, if necessary, subject area specialists from within or outside their respective agencies to consider particular technical issues.

9. The co-chairs shall confer every two months (unless otherwise agreed) on the progress of matters on the Working Group's agenda, including specific work plans established in accordance with Section B, by telephone, electronic mail, or in person. The co-chairs shall submit annual reports to the Committee on Sanitary and Phytosanitary Matters summarizing the Working Group's progress.

Section B : Development of Specific Work Plans

1. Either Party may request that the Working Group establish a specific work plan to address a specific sanitary and phytosanitary measure, project, or issue of particular interest or concern affecting, directly or indirectly, trade between the Parties. The requesting Party shall provide the Working Group with technical information in support of its preferred approach for resolving the matter.

2. Within 60 days after it receives a request, the Working Group shall develop a specific work plan to conduct technical and scientific exchanges on the matter with a view to reaching consensus on resolution of the issue. The work plan shall identify specific activities to be carried out by the Working Group, including, as appropriate, on:

(a) the scope and approach proposed for a risk assessment, and the expertise required for the assessment (including the use of experts from outside each Party's agencies responsible for sanitary and phytosanitary matters);
(b) the technical issues, including hazards, to be addressed in a risk assessment;

(c) the biology and transmission of pests and diseases subject to regulatory control and the type or range of risk mitigation measures that may be available to deal with those pests and diseases;
(d) the risk assessment, including the provision of the full risk analysis report at the appropriate point in the process of each Party's responsible agencies;
(e) matters that may be referred by either Party to an independent scientific peer review or for other independent scientific input; and
(f) mutually agreeable mitigation measures, where possible.

3. The Working Group shall establish a timetable for completing the work plan. The Parties shall exchange and consider all technical information promptly.

INTELLECTUAL PROPERTY RIGHTS

ARTICLE 17.1 : GENERAL PROVISIONS

1. Each Party shall, at a minimum, give effect to this Chapter. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the additional protection and enforcement is not inconsistent with this Agreement.

International Agreements

2. Each Party affirms that it has ratified or acceded to the following agreements, as revised and amended:

(a) the Patent Cooperation Treaty (1970);
(b) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
(c) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);
(d) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980);
(e) the International Convention for the Protection of New Varieties of Plants (1991);
(f) the Trademark Law Treaty (1994);
(g) the Paris Convention for the Protection of Industrial Property (1967) (the Paris Convention); and
(h) the Berne Convention for the Protection of Literary and Artistic Works (1971) (the Berne Convention).

3. Further to Article 1.1.2 (General), the Parties affirm their rights and obligations with respect to each other under the TRIPS Agreement.

4. Each Party shall ratify or accede to the WIPO Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996) by the date of entry into force of this Agreement, subject to the fulfillment of their necessary internal requirements.

5. Each Party shall make its best efforts to comply with the provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (1999), and the Patent Law Treaty (2000), subject to the enactment of laws necessary to apply those provisions in its territory.

National Treatment

6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals[3] of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection[4] and enjoyment of such intellectual property rights and any benefits derived from such rights. With respect to secondary uses of phonograms by means of analogue communications and free over-the-air radio broadcasting, however, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded in the territory of the other Party.

7. A Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
(b) not applied in a manner that would constitute a disguised restriction on trade.

8. Paragraph 6 does not apply to procedures provided in multilateral agreements concluded under the auspices of World Intellectual Property Organization (WIPO) in relation to the acquisition or maintenance of intellectual property rights.

Application of Agreement to Existing Subject Matter

9. Except as it provides otherwise, including Article 17.4.5, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

10. Except as otherwise provided in this Chapter, including Article 17.4.5, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the territory of the Party where the protection is claimed.

Application of Agreement to Prior Acts

11. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Transparency

12. Further to Article 20.2 (Publication), and with the object of making its protection and enforcement of intellectual property rights as transparent as possible, each Party shall ensure that all laws, regulations, and procedures concerning

[3] 17-1For the purposes of Articles 17.1.6, 17.1.7, 17.2.12(b), and 17.6.1, a **national of a Party** also means, in respect of the relevant right, an entity of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Articles 17.1.2 and 17.1.4, and the TRIPS Agreement

[4] For the purposes of this paragraph, **protection** includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, **protection** also includes the prohibition on circumvention of effective technological measures specified in Article 17.4.7 and the rights and obligations concerning rights management information specified in Article 17.4.8.

the protection or enforcement of intellectual property rights shall be in writing and shall be published,[5] or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

ARTICLE 17.2 : TRADEMARKS, INCLUDING GEOGRAPHICAL INDICATIONS

1. Each Party shall provide that marks[6] shall include marks in respect of goods and services, collective marks, and certification marks. Each Party shall also provide that geographical indications are eligible for protection as marks.[7]

2. Neither Party may require, as a condition of registration, that marks be visually perceptible, nor may a Party deny registration of a mark solely on the ground that the sign of which it is composed is a sound or a scent.[8]

3. Each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service ("common name") including, inter alia, requirements concerning the relative size, placement, or style of use of the mark in relation to the common name, do not impair the use or effectiveness of marks used in relation to such goods or services.

4. Each Party shall provide that the owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the owner's mark is registered, where such use would result in a likelihood of confusion. In case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

5. Each Party may provide limited exceptions to the rights conferred by a mark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the mark and of third parties.

6. Article 6bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known mark,[9] whether registered or not, provided that use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the mark, and provided that the interests of the owner of the mark are likely to be damaged by such use.

---

[5] A Party may satisfy the requirement for publication by making the law, regulation, or procedure available to the public on the Internet.

[6] For the purposes of this Article, in respect of the law of Australia, **marks** means "trademarks".

[7] 17-5A geographical indication shall be capable of constituting a mark to the extent that the geographical indication consists of any sign, or any combination of signs (such as words, including geographic and personal names, as well as letters, numerals, figurative elements and colors, including single colors), capable of identifying a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. For the purposes of this Chapter, **originating** does not have the meaning ascribed to that term in Article 1.2 (General Definitions).

[8] A Party may require an adequate description, which can be represented graphically, of the mark.

[9] In determining whether a mark is well known, the reputation of the mark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Recognizing the importance of registration systems for marks that provide rights of presumptive validity, through the conduct of examination as to substance as well as to formalities, and through opposition and cancellation procedures, each Party shall provide a system for the registration of marks, which shall include:

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a mark;
(b) an opportunity for the applicant to respond to communications from the authorities responsible for registration of marks, to contest an initial refusal, and to appeal judicially any final refusal to register;
(c) an opportunity for interested parties to oppose the registration of a mark or to seek cancellation of a mark after it has been registered; and
(d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

8. Each Party shall provide:

(a) a system for the electronic application, processing, registration, and maintenance of marks; and
(b) a publicly available electronic database, including an on-line database, of applications for marks and registrations.

9. Each Party shall provide that initial registration and each renewal of registration of a mark shall be for a term of no less than ten years.

10. Neither Party may require recordal of licenses for marks.

11. Each Party shall endeavour to reduce differences in law and practice between the Parties' respective systems for the protection of marks, including differences that affect the cost to users. In addition, each Party shall endeavour to participate in international trademark harmonization efforts, including the WIPO for a dealing with reform and development of the international trademark system.

12. (a) Each Party shall provide a system that permits owners to assert rights in marks, and interested parties to challenge rights in marks, through administrative or judicial means, or both.

(b) Consistent with sub-paragraph (a), where a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system for the protection of marks or otherwise, it shall accept such applications and petitions without the requirement for intercession by a Party on behalf of its nationals, and shall:

(i) process applications or petitions, as relevant, for geographical indications with a minimum of formalities;
(ii) make its regulations governing filing of such applications or petitions, as relevant, readily available to the public;
(iii) ensure that applications or petitions, as relevant, for geographical indications are published for opposition, and provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition;
(iv) ensure that measures governing the filing of applications or petitions, as

relevant, for geographical indications set out clearly the procedures for these actions. These procedures shall include contact information sufficient for applicants or petitioners, as relevant, to obtain specific procedural guidance regarding the processing of those applications or petitions; and (v) provide that grounds for refusing an application for protection or recognition of a geographical indication include the following:

(A) the geographical indication is likely to cause confusion with a mark that is the subject of a good-faith pending application or registration; and

(B) the geographical indication is likely to cause confusion with a preexisting mark, the rights to which have been acquired through use in good faith in the territory of the Party.

ARTICLE 17.3 : DOMAIN NAMES ON THE INTERNET

1. In order to address trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy.

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants.

ARTICLE 17.4 : COPYRIGHT

1. Each Party shall provide10 that the following have the right to authorize or prohibit11 all reproductions, in any manner or form, permanent or temporary (including temporary storage in material form):

(a) authors, in respect of their works;
(b) performers, in respect of their performances;[12] and
(c) producers of phonograms, in respect of their phonograms.[13]

2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize or prohibit the making available to the public of the original and copies[14] of their works, performances, and phonograms through sale or other transfer of ownership.[15]

3. In order to ensure that no hierarchy is established between rights of authors, on the one

[10] The Parties reaffirm that it is a matter for each Party's law to prescribe that works and phonograms shall not be protected by copyright unless they have been fixed in some material form

[11] For the purposes of Articles 17.4, 17.5, and 17.6, a **right to authorize or prohibit** means an exclusive right.

[12] For the purposes of Articles 17.4, 17.5, and 17.6, a **performance** refers to a performance fixed in a phonogram unless otherwise specified.

[13] References in this Chapter to **authors, performers** and **producers of phonograms** include any successors in interest.

[14] The expressions **copies** and **original and copies** subject to the right of distribution in this paragraph refer exclusively to fixed copies that can be put into circulation as tangible objects.

[15] Nothing in this Agreement shall affect a Party's right to determine the conditions, if any, under which the exhaustion of this right applies after the first sale or other transfer of ownership of the original or a copy of their works, performances, or phonograms with the authorization of the right holder.

hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be:
(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram; or
(ii) failing such authorized publication within 50 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to the subject matter, rights, and obligations in this Article and Articles 17.5 and 17.6.

6. (a) Each Party shall provide that for copyright, any person acquiring or holding any economic right in a work, performance, or phonogram:

(i) may freely and separately transfer that right by contract; and
(ii) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

(b) Each Party may establish measures to give effect to the measures specified in Article 14ter of the Berne Convention.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, or phonogram, or other subject matter; or

(ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public, or provides services that:
(A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;
(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure, shall be liable and subject to the remedies specified in Article 17.11.13. Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged willfully and for the purposes of commercial advantage or financial gain in any of the above activities. Each Party may provide that such criminal procedures and penalties do not apply to a non-profit library, archive, educational institution, or public non-commercial broadcasting entity.

(b) Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright.

(c) In implementing sub-paragraph (a), neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing sub-paragraph (a).

(d) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil or criminal offence and independent of any infringement that might occur under the Party's copyright law.

(e) Each Party shall confine exceptions to any measures implementing sub-paragraph (a) to the following activities, which shall be applied to relevant measures in accordance with sub-paragraph (f):

(i) non-infringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;
(ii) non-infringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;
(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing sub-paragraph (a)(ii);
(iv) non-infringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;
(v) non-infringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;
(vi) lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, essential security, or similar governmental purposes;
(vii) access by a non-profit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and
(viii) non-infringing uses of a work, performance, or phonogram in a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those non-infringing uses is credibly demonstrated in a

legislative or administrative review or proceeding; provided that any such review or proceeding is conducted at least once every four years from the date of conclusion of such review or proceeding.

(f) The exceptions to any measures implementing sub-paragraph (a) for the activities set forth in sub-paragraph (e) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) any measures implementing sub-paragraph (a)(i) may be subject to exceptions with respect to each activity set forth in sub-paragraph (e);
(ii) any measures implementing sub-paragraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions with respect to activities set forth in sub-paragraph (e)(i), (ii), (iii), (iv), and (vi); and
(iii) any measures implementing sub-paragraph (a)(ii), as they apply to effective technological measures that protect any copyright, may be subject to exceptions with respect to the activities set forth in subparagraph (e)(i) and (vi).

8. In order to provide adequate and effective legal remedies to protect rights management information:

(a) each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright:

(i) knowingly removes or alters any rights management information;
(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or
(iii) distributes to the public, imports for distribution, broadcasts, communicates, or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority, shall be liable and subject to the remedies specified in Article 17.11.13. Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged willfully and for purposes of commercial advantage or financial gain in any of the above activities. Each Party may provide that these criminal procedures and penalties do not apply to a non-profit library, archive, educational institution, or public non-commercial broadcasting entity;

(b) each Party shall confine exceptions to measures implementing sub-paragraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar government purposes;

(c) rights management information means:

(i) electronic information that identifies a work, performance, or phonogram; the author of the work; the performer of the performance; the producer of the phonogram; or the owner of any right in the work, performance, or phonogram; or
(ii) electronic information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any electronic numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public. Nothing in this paragraph shall obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. Each Party shall provide appropriate laws, orders, regulations, government issued guidelines, or administrative or executive decrees providing that its central government agencies not use infringing computer software and only use computer software as authorized in the relevant license. These measures shall provide for the regulation of the acquisition and management of software for such government use and may take the form of procedures such as those under which an agency prepares and maintains inventories of software present on the agency's computers and inventories of software licenses.

10. With respect to Articles 17.4, 17.5, and 17.6:

(a) each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder;

(b) notwithstanding sub-paragraph (a) and Article 17.6.3(b), neither Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders, if any, of the content of the signal and of the signal;

(c) unless otherwise specifically provided in this Chapter, nothing in this Article shall be construed as reducing or extending the scope of applicability of the limitations and exceptions permitted under the agreements referred to in Articles 17.1.2 and 17.1.4 and the TRIPS Agreement.

ARTICLE 17.5 : COPYRIGHT WORKS

Without prejudice to Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii), and 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

ARTICLE 17.6 : PERFORMERS AND PRODUCERS OF PHONOGRAMS

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals of the other Party and to performances first fixed or phonograms first fixed or first published in the territory of the other Party. A performance or phonogram shall be considered first published in the territory of a Party in which it is published within 30 days of its original publication.16

2. Each Party shall provide to performers the right to authorize or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and

[16] 17-14For the purposes of this Article, **fixation** includes the finalization of the master tape or its equivalent.

(b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding sub-paragraph (a) and Article 17.4.10, the application of this right to traditional free over-the-air (i.e., non-interactive) broadcasting, and exceptions or limitations to this right for such broadcasting activity, shall be a matter of each Party's law.

(c) Each Party may adopt limitations to this right in respect of other non-interactive transmissions in accordance with Article 17.4.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

4. Neither Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.

5. For the purposes of this Article and Article 17.4, the following definitions apply with respect to performers and producers of phonograms:

(a) broadcasting means the transmission to the public by wireless means or satellite of sounds or sounds and images, or representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) communication to the public of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of paragraph 3, communication to the public includes making the sounds or representations of sounds fixed in a phonogram audible to the public;

(c) fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(e) phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(f) producer of a phonogram means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

(g) publication of a performance or a phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

ARTICLE 17.7 : PROTECTION OF ENCRYPTED PROGRAMME-CARRYING SATELLITE SIGNALS

1. Each Party shall make it a criminal offence:

(a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted programme-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) willfully to receive and make use of, or further distribute, a programme-carrying signal that originated as an encrypted programme-carrying satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted program-carrying signal or its content.

ARTICLE 17.8 : DESIGNS

1. Each Party shall maintain protection for industrial designs that provides a right of presumptive validity and shall endeavour to simplify and streamline its administrative system for the benefit of users.

2. Each Party shall endeavour to reduce differences in law and practice between the Parties' industrial design systems. In addition, each Party shall endeavour to participate in international activities concerning industrial designs, including those ongoing within WIPO.

ARTICLE 17.9 : PATENTS

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. The Parties confirm that patents shall be available for any new uses or methods of using a known product. For the purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as synonymous with the terms "non-obvious" and "useful", respectively.

2. Each Party may only exclude from patentability:

(a) inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by law; and

(b) diagnostic, therapeutic, and surgical methods for the treatment of humans and animals.

3. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Each Party shall provide that the exclusive right of the patent owner to prevent importation of a patented product, or a product that results from a patented process, without the consent of the patent owner shall not be limited by the sale or distribution of that product outside its territory, at least where the patentee has placed restrictions on importation by contract or other means.

5. Each Party shall provide that a patent may only be revoked on grounds that would have justified a refusal to grant the patent, or on the basis of fraud, misrepresentation, or inequitable conduct.

6. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of that Party other than for purposes related to generating information to meet requirements for marketing approval for the product, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

7. A Party shall not permit the use[17] of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

(a) to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's laws relating to prevention of anti-competitive practices;[18] or

(b) in cases of public non-commercial use, or of national emergency, or other circumstances of extreme urgency, provided that:

(i) the Party shall limit such use to use by the government or third persons authorized by the government;
(ii) the Party shall ensure that the patent owner is provided with reasonable compensation for such use; and
(iii) the Party may not require the patent owner to provide undisclosed information or technical know-how related to a patented invention that has been authorized for use in accordance with this paragraph.

8. (a) If there are unreasonable delays in a Party's issuance of patents, that Party shall provide the means to, and at the request of a patent owner, shall, adjust the term of the patent to compensate for such delays. An unreasonable delay shall at least include a delay in the issuance of a patent of more than four years from the date of filing of the application in the Party, or two years after a request for examination of the application has been made, whichever is later. For the purposes of this paragraph, any delays that occur in the issuance of a patent due to periods attributable to actions of the patent applicant or any opposing third person need not be included in the determination of such delay.

(b) With respect to a pharmaceutical product[19] that is subject to a patent, each Party shall make available an adjustment of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process.

9. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure, (a) was made or authorized by, or derived from, the patent applicant and (b) occurs within 12 months prior to the date of filing of the application in the territory of the Party.

---

[17] "Use" in this paragraph refers to use other than that allowed under paragraph 3 and Article 30 of the TRIPS Agreement.

[18] With respect to sub-paragraph (a), the Parties recognize that a patent does not necessarily confer market power.

[19] For Australia, the term pharmaceutical substance as used in Section 70 of the Patents Act 1990 on the date of entry into force of this Agreement may be treated as synonymous with the term **pharmaceutical product** as used in this sub-paragraph.

10. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications.

11. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

12. Each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention, as of the filing date.

13. Each Party shall provide that a claimed invention is useful if it has a specific, substantial, and credible utility.

14. Each Party shall endeavour to reduce differences in law and practice between their respective systems, including in respect of differences in determining the rights to an invention, the prior art effect of applications for patents, and the division of an application containing multiple inventions. In addition, each Party shall endeavour to participate in international patent harmonization efforts, including the WIPO fora addressing reform and development of the international patent system.

15. Each Party shall endeavour to establish a cooperative framework between their respective patent offices as a basis for progress towards the mutual exploitation of search and examination work.

ARTICLE 17.10 : MEASURES RELATED TO CERTAIN REGULATED PRODUCTS

1. (a) If a Party requires, as a condition of approving the marketing of a new pharmaceutical product, the submission of undisclosed test or other data concerning safety or efficacy of the product, the Party shall not permit third persons, without the consent of the person who provided the information, to market the same or a similar product on the basis of that information, or the marketing approval granted to the person who submitted such information, for at least five years from the date of marketing approval by the Party.

(b) If a Party requires, as a condition of approving the marketing of a new agricultural chemical product, including certain new uses of the same product, the submission of undisclosed test or other data concerning safety or efficacy of that product, the Party shall not permit third persons, without the consent of the person who provided the information, to market the same or a similar product on the basis of that information, or the marketing approval granted to the person who submitted such information, for ten years from the date of the marketing approval of the new agricultural chemical product by the Party.

(c) If a Party permits, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, third persons to submit evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval, the Party shall not permit third persons, without the consent of the person who previously submitted information concerning safety or efficacy, to market the same or a similar product on the basis of evidence of prior marketing approval in another territory, or information concerning safety or efficacy that was previously submitted to obtain marketing approval in another territory, for at least five years, and ten years for agricultural chemical products, from the date of marketing approval by the Party, or the other territory, whichever is late.[20]

[20]The Parties acknowledge that, at the time of entry into force of this Agreement, neither Party permits third persons, not having the consent of the person that previously submitted information concerning the safety and efficacy of a product in order to obtain marketing approval in another territory, to market a same or similar product in the territory of the Party on the basis of such information or evidence of prior marketing approval in another territory.

(d) For the purposes of this Article, a new product is one that does not contain a chemical entity that has been previously approved for marketing in the Party.

(e) If any undisclosed information concerning the safety or efficacy of a product submitted to a government entity, or entity acting on behalf of a government, for the purposes of obtaining marketing approval is disclosed by a government entity, or entity acting on behalf of a government, each Party is required to protect such information from unfair commercial use in the manner set forth in this Article.

2. With respect to pharmaceutical products, if a Party requires the submission of: (a) new clinical information (other than information related to bioequivalency) or (b) evidence of prior approval of the product in another territory that requires such new information, which is essential to the approval of a pharmaceutical product, the Party shall not permit third persons not having the consent of the person providing the information to market the same or a similar pharmaceutical product on the basis of the marketing approval granted to a person submitting the information for a period of at least three years from the date of the marketing approval by the Party or the other territory, whichever is later.[21]

3. When a product is subject to a system of marketing approval in accordance with paragraph 1 or 2, as applicable, and is also subject to a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraph 1 or 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraph 1 or 2, as applicable.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety or efficacy information, to rely on evidence or information concerning the safety or efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory:

(a) that Party shall provide measures in its marketing approval process to prevent those other persons from:

(i) marketing a product, where that product is claimed in a patent; or
(ii) marketing a product for an approved use, where that approved use is claimed in a patent,

during the term of that patent, unless by consent or acquiescence of the patent owner; and

(b) if the Party permits a third person to request marketing approval to enter the market with:

(i) a product during the term of a patent identified as claiming the product; or
(ii) a product for an approved use, during the term of a patent identified as claiming that approved use, the Party shall provide for the patent owner to be notified of such request and the identity of any such other person.

[21] As an alternative to this paragraph, where a Party, on the date of entry into force of this Agreement, has in place a system for protecting information submitted in connection with the approval of a pharmaceutical product that utilizes a previously approved chemical component from unfair commercial use, the Party may retain that system, notwithstanding the obligations of this paragraph.

ARTICLE 17.11 : ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

General obligations

1. For greater clarity, the obligations specified in this Article are limited to the enforcement of intellectual property rights, or, if mentioned, a particular intellectual property right.

2. Each Party shall provide that final judicial decisions or administrative rulings for the enforcement of intellectual property rights that under the Party's law are of general applicability shall be in writing and shall state any relevant findings of fact and the reasoning, or the legal basis on which the decisions or rulings are based. Each Party shall provide that such decisions or rulings shall be published[22] or, where such publication is not practicable, otherwise made available to the public, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

3. Each Party shall inform the public of its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal system, including any statistical information that the Party may collect for such purpose.

4. In civil, criminal, and if applicable, administrative procedures, involving copyright, each Party shall provide for a presumption that, in the absence of evidence to the contrary, the person whose name is indicated in the usual manner is the right holder in the work, performance, or phonogram as designated. Each Party shall also provide for a presumption, in the absence of evidence to the contrary, of all the factual elements necessary to establish under its law that copyright subsists in such subject matter.

Civil and Administrative Procedures and Remedies

5. Each Party shall make available to right holders[23] civil judicial procedures concerning the enforcement of any intellectual property right.

6. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:

> (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and
> (ii) at least in the case of copyright infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and that are not taken into account in computing the amount of the damages referred to in clause (i).

[22] A Party may satisfy the requirement for publication by making the measure available to the public on the Internet.

[23] For the purpose of this Article, the term **right holder** shall include exclusive licensees as well as federations and associations having the legal standing and authority to assert such rights; the term **exclusive licensee** shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

(b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, inter alia, any legitimate measure of the value of the infringed on good or service that the right holder submits, including the suggested retail price.

7. (a) In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright, and in cases of trademark counterfeiting, establish or maintain pre-established damages, which shall be available on the election of the right holder. Such pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.

(b) As an alternative to the requirements in sub-paragraph (a) with respect to both copyright and to trademark counterfeiting, a Party may maintain a system of additional damages in civil judicial proceedings involving infringement of copyright in works, phonograms, and performances; provided that if such additional damages, while available, are not regularly awarded in proceedings involving deliberate acts of infringement where needed to deter infringement, that Party shall promptly ensure that such damages are regularly awarded or establish a system of pre-established damages as specified in sub-paragraph (a) with respect to copyright infringement.

8. Each Party shall provide that its judicial authorities shall have the authority to order, at the conclusion of civil judicial proceedings at least for copyright infringement and trademark counterfeiting, that the prevailing party be awarded payment of court costs or fees and reasonable attorney's fees by the losing party.[24] Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party be awarded payment of reasonable attorney's fees by the losing party.

9. In civil judicial proceedings concerning copyright infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

10. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit in breach of a copyright or trademark of the right holder shall be destroyed, except in exceptional circumstances;[25]

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or the creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

[24] A Party may limit this authority in exceptional circumstances.
[25] A Party may give effect to paragraph 10(a) through, *inter alia*, the exercise of judicial discretion or pursuant to specific causes of action, as applicable.

11. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person involved in any aspect of the infringement and regarding the means of production or distribution channel of the infringing material, and to provide this information to the right holder's representative in the proceedings.[26]

12. Each Party shall provide that in judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to:

(a) fine or imprison, in appropriate cases, a party to litigation who fails to abide by valid orders issued by such authorities; and

(b) impose sanctions on parties to litigation, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.

13. (a) In civil judicial proceedings concerning the acts described in Article 17.4.7 and 17.4.8, each Party shall provide that its judicial authorities shall have the authority to order or award at least:

(i) provisional measures, including the seizure of devices and products suspected of being involved in the proscribed activity;
(ii) damages of the type available for infringement of copyright;
(iii) payment to the prevailing party of court costs and fees and reasonable attorney's fees;[27] and
(iv) destruction of devices and products found to be involved in the proscribed activity.

(b) A Party may provide that damages shall not be available against a non-profit library, archive, education institution, or public non-commercial broadcasting entity that sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a proscribed activity.

14. Each Party shall provide that its judicial authorities shall have the authority to enjoin a party to a civil judicial proceeding from the exportation of goods that are alleged to infringe an intellectual property right.

15. If a Party's judicial or other authorities appoint technical or other experts in civil judicial proceedings concerning the enforcement of intellectual property rights, and require that the parties to litigation or other civil or criminal proceedings bear the costs of such experts, the Party should seek to ensure that these costs are reasonable and related appropriately to, inter alia, the quantity and nature of work to be performed and do not unreasonably deter recourse to such litigation or proceeding.

Provisional measures

16. Each Party's authorities shall act on requests for relief inaudita altera parte expeditiously in accordance with the Party's judicial rules.

[26] For greater clarity, this provision does not apply to the extent that it would conflict with common law or statutory privileges, such as legal professional privilege.

[27] Reasonable attorney's fees may include those levied pursuant to relevant court fee schedules.

17. With respect to provisional measures, each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the respondent and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

18. In proceedings concerning the grant of provisional measures in relation to enforcement of a patent, each Party shall provide for a rebuttable presumption that the patent is valid.

Special requirements related to border measures

19. Each Party shall provide that any right holder initiating procedures for that Party's customs authorities to suspend the release of suspected counterfeit[28] or confusingly similar trademark goods, or pirated copyright goods,[29] into free circulation is required to provide adequate evidence to satisfy the competent authorities, administrative or judicial that, under the laws of the territory of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by the Party's customs authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall remain in force for a period of not less than one year from the date of application or the period that the good is protected by copyright or the relevant trademark is registered, whichever is shorter.

20. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of goods suspected of being counterfeit trademark or pirated copyright goods to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a documentary guarantee conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

21. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall provide that its competent authorities have the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

22. Each Party shall provide that its customs authorities may initiate border measures ex

[28] For the purposes of paragraphs 19 through 24, **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

[29] For the purposes of paragraphs 19 through 24, **pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

officio with respect to imported merchandise suspected of infringing being counterfeit trademark or pirated copyright goods, without the need for a specific formal complaint.

23. Each Party shall provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional cases. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods that have been seized, nor shall they be authorized to permit such goods to be subject to movement under customs control, except in exceptional circumstances.

24. Each Party shall provide that where an application fee or merchandise storage fee is assessed in connection with border measures to enforce a trademark or copyright, the fee shall not be set at an amount that unreasonably deters recourse to these measures.

25. Each shall provide the other, on mutually agreed terms, with technical advice on the enforcement of border measures concerning intellectual property rights, and the Parties shall promote bilateral and regional cooperation on such matters.

Criminal procedures and remedies

26. (a) Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Willful copyright piracy on a commercial scale includes:

(i) significant willful infringements of copyright, that have no direct or indirect motivation of financial gain; and
(ii) willful infringements for the purposes of commercial advantage or financial gain.

(b) Each Party shall treat willful importation or exportation[30] of pirated copyright goods or of counterfeit trademark goods as unlawful activities subject to criminal penalties to at least the same extent as trafficking or distributing such goods in domestic commerce.

27. In cases of willful trademark counterfeiting or copyright piracy on a commercial scale, each Party shall provide:

(a) penalties that include imprisonment and monetary fines sufficiently high to provide a deterrent to infringement consistent with a policy of removing the monetary incentive of the infringer. Also, each Party shall encourage its judicial authorities to impose fines at levels sufficient to provide a deterrent to future infringements;

(b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offence, any assets traceable to the infringing activity, and any documentary evidence relevant to the offence;[31]

(c) that its judicial authorities shall have the authority, among other measures, to order the forfeiture of any assets traceable to the infringing activity for at least

[30] A Party may comply with paragraph 26(b) in relation to exportation through its measures concerning distribution or trafficking.

[31] Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order.

indictable offences, and shall, except in exceptional circumstances, order the forfeiture and destruction of all goods found to be counterfeit or pirated, and, at least with respect to willful copyright piracy, order the forfeiture and destruction of materials and implements that have been used in the creation of the infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation to the defendant; and

(d) that the appropriate authorities, as determined by each Party, shall have the authority to initiate criminal legal action ex officio with respect to the offences described in this Chapter without the need for a formal complaint by a private party or right holder.

28. Each Party shall provide for criminal procedures and penalties for the knowing transport, transfer, or other disposition of, in the course of trade, or the making or obtaining control of, with intent to so transport, transfer, or otherwise dispose of, in the course of trade, to another for anything of value:

(a) either false or counterfeit labels affixed or designed to be affixed to, at least the following:

(i) a phonogram;
(ii) a copy of a computer program or documentation;
(iii) the packaging for a computer program; or
(iv) a copy of a motion picture or other audiovisual work; or

(b) counterfeit documentation or packaging for a computer program where the documentation or packaging has been made or obtained without the authorization of the right holder.

Limitations on liability for service providers

29. Consistent with Article 41 of the TRIPS Agreement, for the purposes of providing enforcement procedures that permit effective action against any act of copyright infringement covered under this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework specified in this Article:

(a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this sub-paragraph.[32]

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions, and shall be confined to those functions:[33]

[32] Paragraph 29(b) is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

[33] Either Party may request consultations with the other Party to consider how to address under this paragraph functions of a similar nature to the functions identified in paragraphs (A) through (D) above that a Party identifies after the entry into force of this Agreement

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;
(B) caching carried out through an automatic process;
(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and
(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clause (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).

(iv) With respect to function referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;
(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a relevant industry standard data communications protocol for the system or network through which that person makes the material available that is generally accepted in the Party's territory;
(C) not interfering with technology used at the originating site consistent with industry standards generally accepted in the Party's territory to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and
(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clause (i)(C) and (D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;
(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and
(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this sub-paragraph shall be conditioned on the service provider:
(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and
(B) accommodating and not interfering with standard technical

measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy, and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice and an opportunity to appear before the judicial authority.

(ix) For the purposes of the notice and take down process for the functions referred to in clause (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is the subject of a notice for removal or disabling, on the basis of a good faith belief that it was issued by mistake or misidentification in accordance with clause (v)(B). Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall provide for an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer. (xii) For the purposes of the function referred to in clause (i)(A), service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for the purposes of the functions referred to in clause (i)(B) through (D), service provider means a provider or operator of facilities for online services or network access.

ARTICLE 17.12 : TRANSITIONAL PROVISIONS
Recognizing that Australian law currently restricts making and distributing devices or providing services to circumvent effective technological measures, Australia shall fully implement the obligations set forth in Article 17.4.7 within two years of the date of entry into force of this Agreement. In the interim, Australia may not adopt any new measure that is less consistent with Article 17.4.7 or apply any new or existing measure so as to reduce the level of protection provided on the date of entry into force of this Agreement.

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1 : SCOPE AND COVERAGE

Except as otherwise provided, this Chapter applies to trade in goods of a Party.

Section A : National Treatment

ARTICLE 2.2 : NATIONAL TREATMENT
Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, subject to Annex 2-A (Application of Chapter 2).

Section B : Tariffs

ARTICLE 2.3 : ELIMINATION OF CUSTOMS DUTIES
1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with Annex 2-B (Tariff Elimination).

2. Neither Party may increase an existing customs duty or introduce a new customs duty on imports of an originating good, other than as permitted by this Agreement, subject to Annex 2-A (Application of Chapter 2).

ARTICLE 2.4 : CUSTOMS VALUE
The Parties shall apply the provisions of the Customs Valuation Agreement for the purposes of determining the customs value of goods traded between the Parties.

ARTICLE 2.5 : TEMPORARY ADMISSION
1. Each Party shall grant duty-free temporary admission for the following goods, imported by or for the use of a resident of the other Party:

(a) professional equipment, including software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;
(b) goods intended for display or demonstration at exhibitions, fairs, or similar events, including commercial samples for the solicitation of orders, and advertising films and recordings; and
(c) goods temporarily admitted for sports purposes, regardless of their origin.

2. Neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that such good:

(a) be used solely by or under the personal supervision of a national or resident of the

other Party in the exercise of the business activity, trade, or profession of that person;
(b) not be sold, leased, or consumed while in its territory;
(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
(d) be capable of identification when exported;
(e) be exported on or before the departure of that person or within such other period as is reasonably related to the purpose of the temporary admission, not to exceed three years after the date of importation;
(f) be imported in no greater quantity than is reasonable for its intended use; and
(g) be otherwise admissible into the Party's territory under its laws.

3. If any condition that a Party imposes under paragraph 2 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on entry or final importation of the good.

4. Each Party, through its customs authorities, shall adopt procedures providing for the expeditious release of the goods described in paragraph 1. To the extent possible, when such goods accompany a national or resident of the other Party seeking temporary entry, and are imported by that person for use in the exercise of a business activity, trade, or profession of that person, the procedures shall allow for the goods to be released simultaneously with the entry of that person subject to the necessary documentation required by the customs authorities of the importing Party.

5. Each Party shall, at the request of the person concerned and for reasons deemed valid by its customs authorities, extend the time limit for temporary admission beyond the period initially fixed.

6. Each Party shall permit temporarily admitted goods to be exported through a customs port other than that through which they were imported.

7. Each Party shall relieve the importer of liability for failure to export a temporarily admitted good on presentation of satisfactory proof to the Party's customs authorities that the good has been destroyed within the original time limit for temporary admission or any lawful extension. Prior approval will have to be sought from the customs authorities of the importing Party before the good can be so destroyed.

8. Subject to Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment):

(a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of the container;

(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the container's port of entry and its port of departure;

(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes the container to the territory of the other Party.

ARTICLE 2.6 : GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported temporarily from its territory to the territory of the other Party for repair or alteration, regardless of whether the repair or alteration could be performed in its territory.

2. Neither Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

3. For the purposes of this Article:

(a) the repairs or alterations shall not destroy the essential characteristics of the good, or change it into a different commercial item;
(b) operations carried out to transform unfinished goods into finished goods shall not be considered repairs or alterations; and
(c) parts or pieces of the goods may be subject to repairs or alterations.

ARTICLE 2.7 : DUTY-FREE ENTRY OF COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

(a) the samples be imported solely for the solicitation of orders for goods of, or services provided from the territory of, the other Party or a non-Party; or

(b) the advertising materials be imported in packets that each contain no more than one copy of each such material and that neither those materials nor packets form part of a larger consignment.

ARTICLE 2.8 : WAIVER OF CUSTOMS DUTIES

1. Neither Party may adopt a new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. Neither Party may condition, explicitly or implicitly, the continuation of any existing waiver of customs duties on the fulfillment of a performance requirement.

3. This Article shall not apply to drawback or duty deferral programs.

Section C : Non-Tariff Measures

ARTICLE 2.9 : IMPORT AND EXPORT RESTRICTIONS

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its interpretative notes, and to this end Article XI of GATT 1994, including its interpretative notes, is incorporated into and made a part of this Agreement.

2. The Parties understand that the rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, import licensing conditioned on the fulfillment of a performance requirement, export price requirements, and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed as preventing the Party from:

(a) limiting or prohibiting the importation from the territory of the other Party of such good of that non-Party; or
(b) requiring as a condition of export of such good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. Paragraphs 1 through 3 shall not apply to the measures set out in Annex 2-A.

5. Nothing in this Article shall be construed as affecting a Party's rights and obligations under the Agreement on Textiles and Clothing.

ARTICLE 2.10 : ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties applied pursuant to a Party's law), imposed on or in connection with importation or exportation, are limited in amount to the approximate cost of services rendered and do not represent indirect protection of domestic products or a taxation of imports or exports for fiscal purposes.

2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

3. Each Party shall make available on the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

ARTICLE 2.11 : EXPORT TAXES

Neither Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless such duty, tax, or charge is adopted or maintained on any such good when destined for consumption in its territory.

Section D : Other Measures

ARTICLE 2.12 : MERCHANDISE PROCESSING FEE

Neither Party may adopt or maintain a merchandise processing fee on originating goods.

Section E : Institutional Provisions

ARTICLE 2.13 : COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet on the request of either Party or the Joint Committee established in Chapter 21 (Institutional Arrangements and Dispute Settlement) to consider any matter arising under this Chapter, Chapter Five (Rules of Origin), or Chapter Six (Customs Administration).

3. The Committee's functions shall include:

(a) promoting trade in goods between the Parties; and
(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Joint Committee for its consideration.

Section F : Definitions

ARTICLE 2.13 : DEFINITIONS
For the purposes of this Chapter:

1. advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

2. commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in Australian currency, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

3. consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

4. consumed means:

(a) actually consumed; or
(b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good, or in the production of another good;

5. drawback means measures in which a Party refunds the amount of customs duties paid on a good imported into its territory, on condition that the good is:

(a) subsequently exported to the territory of the other Party;
(b) substituted by an identical or similar good exported to the territory of the other Party;
(c) used as a material in the production of another good that is subsequently exported to the territory of another Party;
(d) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party;

6. duty-free means free of customs duty;

7. duty deferral program includes measures such as those governing foreign-trade zones, temporary importations under bond, bonded warehouses, and inward processing programs;

8. goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;

9. goods temporarily admitted for sports purposes means:

(a) sports requisites for use in sports contests, demonstrations, or training; and

(b) for such events as deemed valid by competent authorities, in the territory of the Party into whose territory such goods are admitted;

10. import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

11. performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;
(b) goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods or services;
(c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods or services;
(d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or
(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows; and

12. printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, or are essentially intended to advertise a good or service, and are supplied free of charge.

ANNEX 2-A
APPLICATION OF CHAPTER TWO

Section A-Measures of the United States

Articles 2.2, 2.3, and 2.9 shall not apply to:

(a) controls by the United States on the export of logs of all species;

(b) (i) measures under existing provisions of the Merchant Marine Act of 1920, 46 App. U.S.C. § 883; the Passenger Vessel Act, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the General Agreement on Tariffs and Trade 1947 ("GATT 1947") and have not been amended so as to decrease their conformity with Part II of GATT 1947;
(ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and
(iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.2 and 2.9; and

(c) actions by the United States authorized by the Dispute Settlement Body of the WTO.

Section B – Measures of Australia
Articles 2.2, 2.3, and 2.9 shall not apply to:

(a) controls by Australia on the exports of woodchips and unprocessed forest products (e.g., whole logs) sourced from native forests outside Regional Forest Agreement regions, or plantation forests within States where Codes of Practice have not been approved by the Australian Government, and Sandalwood (Santalum spicatum) sourced from any State, the Australian Capital Territory, or the Northern Territory;

(b) controls on importation of second hand motor vehicles under Section 17A of the Motor Vehicles Standards Act of 1989 and the Motor Vehicles Standards Regulations of 1989;

(c) wheat marketing arrangements under the Wheat Marketing Act 1989 and the Customs (Prohibited Exports) Regulations 1958, as amended;

(d) grain marketing arrangements under the New South Wales Grain Marketing Act 1991 and Marketing of Primary Products Act 1983, the South Australian Barley Marketing Act 1993, the Western Australian Grain Marketing Act 2002 and Grain Marketing Regulations 2002, and the Queensland Grain Industry (Restructuring) Act 1991, as amended;

(e) sugar marketing arrangements under the Queensland Sugar Industry Amendment Act 2000, as amended;

(f) rice marketing arrangements under the New South Wales Marketing of Primary Products Act 1983, as amended;

(g) horticulture export efficiency licensing arrangements under the Horticulture Marketing and Research and Development Services Act 2000 and Horticulture Marketing and Research and Development (Export Efficiency) Regulations 2002, as amended;

(h) the provisions of and measures under the Livestock Export (Merino) Orders, made under the Export Control Act of 1982, as amended; and

(i) actions by Australia authorized by the Dispute Settlement Body of the WTO.

ANNEX 2-B
TARIFF ELIMINATION

1. Base Rates of Customs Duty. Except as otherwise indicated, the base rates of customs duty set forth in this schedule reflect the HTSUS Column 1 General rates of duty in effect January 1, 2004, for the United States and the general rates of duty in Schedule 3 to the Australian Customs Tariff Act 1995, in effect January 1, 2004, for Australia.

2. Staging. Except as otherwise provided in a Party's Schedule attached to this Annex, the following staging categories apply to the elimination of duties by each Party pursuant to Article 2.3:

(a) duties on goods provided for in the items in staging category A shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force;

(b) duties on goods provided for in the items in staging category B shall be removed in equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year four;

(c) duties on goods provided for in the items in staging category C shall be removed in equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year eight;

(d) duties on goods provided for in the items in staging category D shall be removed in equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year ten; and

(e) goods provided for in staging category E shall continue to receive duty-free treatment.

ANNEX 2-C PHARMACEUTICALS
1. AGREED PRINCIPLES
The Parties are committed to facilitating high quality health care and continued improvements in public health for their nationals. In pursuing these objectives, the Parties are committed to the following principles:

(a) the important role played by innovative pharmaceutical products in delivering high quality health care;

(b) the importance of research and development in the pharmaceutical industry and of appropriate government support, including through intellectual property protection and other policies;

(c) the need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious, and accountable procedures, without impeding a Party's ability to apply appropriate standards of quality, safety, and efficacy; and

(d) the need to recognize the value of innovative pharmaceuticals through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical.

2. TRANSPARENCY[34]

To the extent that a Party's federal healthcare authorities operate or maintain procedures for listing new pharmaceuticals or indications for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its federal healthcare programs, it shall:

(a) ensure that consideration of all formal proposals for listing are completed within a specified time;
(b) disclose procedural rules, methodologies, principles, and guidelines used to assess a proposal;
(c) afford applicants timely opportunities to provide comments at relevant points in the process;
(d) provide applicants with detailed written information regarding the basis for recommendations or determinations regarding the listing of new pharmaceuticals or for setting the amount of reimbursement by federal healthcare authorities;
(e) provide written information to the public regarding its recommendations or determinations, while protecting information considered to be confidential under the Party's law; and
(f) make available an independent review process that may be invoked at the request of an applicant directly affected by a recommendation or determination.

[34] 2C-1 Pharmaceutical formulary development and management shall be considered to be an aspect of government procurement of pharmaceutical products for federal healthcare agencies that engage in government procurement. Government procurement of pharmaceutical products shall be governed by Chapter Fifteen (Government Procurement) and not the provisions of this Annex.

3. MEDICINES WORKING GROUP
(a) The Parties hereby establish a Medicines Working Group.
(b) The objective of the Working Group shall be to promote discussion and mutual understanding of issues relating to this Annex (except those issues covered in paragraph 4), including the importance of pharmaceutical research and development to continued improvement of healthcare outcomes.[35]
(c) The Working Group shall comprise officials of federal government agencies responsible for federal healthcare programs and other appropriate federal government officials.

4. REGULATORY COOPERATION
The Parties shall seek to advance the existing dialogue between the Australian Therapeutic Goods Administration and the U.S. Food and Drug Administration with a view to making innovative medical products more quickly available to their nationals.

5. DISSEMINATION OF INFORMATION
Each Party shall permit a pharmaceutical manufacturer to disseminate to health professionals and consumers through the manufacturer's Internet site registered in the territory of the Party, and on other Internet sites registered in the territory of the Party linked to that site, truthful and not misleading information regarding its pharmaceuticals that are approved for sale in the Party's territory as is permitted to be disseminated under the Party's laws, regulations, and procedures, provided that the information includes a balance of risks and benefits and encompasses all indications for which the Party's competent regulatory authorities have approved the marketing of the pharmaceuticals.

6. DEFINITIONS
For the purposes of this Annex:
federal healthcare program means a health care program in which the Party's federal health authorities make the decisions regarding matters to which this Annex applies.

FINANCIAL SERVICES

ARTICLE 13.1 : SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) financial institutions of the other Party;
(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
(c) cross-border trade in financial services.

2. Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 10.11 (Denial of Benefits), 11.7 (Expropriation and Compensation), 11.8 (Transfers), 11.11 (Investment and the Environment), 11.12 (Denial of Benefits), and 11.14 (Special Formalities and Information Requirements) are hereby incorporated into and made a part of this Chapter.

[35] Nothing in this paragraph shall be construed as requiring a Party to review or change decisions regarding specific applications.

(b) Article 10.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 13.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or
(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution, this Chapter shall apply to measures of that Party relating to such activities or services.

ARTICLE 13.2 : NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

ARTICLE 13.3 : MOST-FAVOURED-NATION TREATMENT

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.

ARTICLE 13.4 : MARKET ACCESS FOR FINANCIAL INSTITUTIONS

A Party shall not adopt or maintain, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:
(a) impose limitations on

(i) the number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[36] or
(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

[36] This clause does not cover measures of a Party which limit inputs for the supply of financial services.

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

ARTICLE 13.5 : CROSS-BORDER TRADE

1. Each Party shall permit, under terms and conditions that accord national treatment, crossborder financial service suppliers of the other Party to supply the services specified in Annex 13- A. National treatment requires that a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that which it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for the purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

ARTICLE 13.6 : NEW FINANCIAL SERVICES

Each Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the first Party. Notwithstanding Article 13.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.[37]

ARTICLE 13.7 : TREATMENT OF CERTAIN INFORMATION

Nothing in this Chapter requires a Party to furnish or allow access to information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers.

ARTICLE 13.8 : SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. A Party may not require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

ARTICLE 13.9 : NON-CONFORMING MEASURES

1. Articles 13.2 through 13.5 and 13.8 do not apply to:
(a) any existing non-conforming measure that is maintained by a Party at

[37] The Parties understand that nothing in Article 13.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 13.6.

(i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III,
(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III, or
(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in sub-paragraph (a); or

(c) an amendment to any non-conforming measure referred to in sub-paragraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed

(i) immediately before the amendment, with Articles 13.2, 13.3, 13.4, or 13.8; or
(ii) on the date of entry into force of the Agreement, with Article 13.5.

2. Articles 13.2 through 13.5 and 13.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in Section B of its Schedule to Annex III.

3. Annex 13-B sets out certain specific commitments by each Party.

4. A non-conforming measure set out in a Party's Schedule to Annex I or II as not subject to Articles 10.2, 10.3, 11.3, 11.4, or 11.10 shall be treated as a non-conforming measure not subject to Articles 13.2, 13.3, 13.5.1, or 13.8.2, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the non-conforming measure is covered by this Chapter.

ARTICLE 13.10 : EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapters Eleven (Investment), Twelve (Telecommunications), or Sixteen (Electronic Commerce), including specifically Article 12.24 (Relationship to Other Chapters), and Article 10.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters Eleven, Twelve, or Sixteen, including specifically Article 12.24, and Article 10.1 with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 11.9 (Performance Requirements) with respect to measures covered by Chapter Eleven, or under Articles 10.10 or 11.8.

3. Notwithstanding Articles 10.10 and 11.8, as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including

those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

ARTICLE 13.11 : REGULATORY TRANSPARENCY

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's market. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

3. In lieu of Article 20.2.2 (Publication), each Party shall, to the extent practicable,

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

4. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

5. To the extent practicable, each Party should provide notice of the requirements of final regulations a reasonable time prior to their effective date.

6. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.

9. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

11. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

ARTICLE 13.12 : SELF-REGULATORY ORGANISATIONS
Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into its territory, the Party shall ensure observance of the obligations of Articles 13.2 and 13.3 by such self-regulatory organization.

ARTICLE 13.13 : PAYMENT AND CLEARING SYSTEMS
Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

ARTICLE 13.14 : EXPEDITED AVAILABILITY OF INSURANCE SERVICES
The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

ARTICLE 13.15 : RECOGNITION
1. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded autonomously;
(b) achieved through harmonization or other means; or
(c) based upon an agreement or arrangement with the non-Party.

2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

ARTICLE 13.16 : FINANCIAL SERVICES COMMITTEE
1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 13-C.

2. The Committee shall:
(a) supervise the implementation of this Chapter and its further elaboration; and
(b) consider issues regarding financial services that are referred to it by a Party, including ways to further integrate financial services sectors between the Parties.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Committee established under Article 21.1 (Joint Committee) of the results of each meeting.

ARTICLE 13.17 : CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 13-C.

ARTICLE 13.18 : DISPUTE SETTLEMENT

1. Section B of Chapter Twenty-One (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 21.7 shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
(b) in any other case,

(i) each Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 21.7.3, and
(ii) if the Party complained against invokes Article 13.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties agree otherwise.

3. Financial services panelists shall:
(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
(c) be independent of, and not be affiliated with or take instructions from, either Party; and not have a conflict of interest or appearance thereof, as set forth in a code of conduct to be established by the Joint Committee; and
(d) comply with the code of conduct.

4. Further to Article 21.11 (Non-implementation), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or
(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.

ARTICLE 13.19 : DEFINITIONS

For the purposes of this Chapter:
1. cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

2. cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:
(a) from the territory of one Party into the territory of the other Party,
(b) in the territory of one Party by a person of that Party to a person of the other
Party, or

(c) by a national of one Party in the territory of the other Party, but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

3. financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

4. financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

5. financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

insurance and insurance-related services

(a) Direct insurance (including co-insurance):

(i) life,
(ii) non-life;

(b) Reinsurance and retrocession;
(c) Insurance intermediation, such as brokerage and agency; and
(d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;
(f) Lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
(g) Financial leasing;
(h) All payment and money transmission services, including credit, charge, and debit cards, travellers checks, and bankers drafts;
(i) Guarantees and commitments;
(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
(i) money market instruments (including checks, bills, certificates of deposits);

(ii) foreign exchange;
(iii) derivative products including, but not limited to, futures and options;
(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
(v) transferable securities; and
(vi) other negotiable instruments and financial assets, including bullion;

(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services

related to such issues;
(l) Money broking;
(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in clauses (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

6. financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;
7. investment means "investment" as defined in Article 11.17.4 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

> (a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
> (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in sub-paragraph
> (a), is not an investment. For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter Eleven, if such loan or debt instrument meets the criteria for investments set out in Article 11.17.4;

8. investor of a Party means a Party, or a person of a Party, that seeks to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a citizen of both Parties or a Party and a non-Party shall be deemed to be exclusively a citizen of the State of his or her dominant and effective nationality;

9. new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

10. person of a Party means "person of a Party" as defined in Article 1.2 (Establishment of a Free Trade Area and General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

11. public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for greater certainty, a public entity[38] shall not be considered a designated monopoly or a state enterprise for the purposes of Chapter Fourteen (Competition); and

12. self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or

[38] The Federal Deposit Insurance Corporation of the United States shall be deemed to be within the definition of public entity for purposes of Chapter Fourteen (Competition).

supervisory authority over financial service suppliers or financial institutions; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for the purposes of Chapter Fourteen (Competition).

ANNEX 13-A
Cross-Border Trade UNITED STATES

Insurance and insurance-related services
For the United States, Article 13.5.1 applies to the cross-border supply of or trade in financial services as defined in Article 13.19.2(a) with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
(ii) goods in international transit;

(b) reinsurance and retrocession, services auxiliary to insurance as referred to in Article 13.19.5(d), and insurance intermediation such as brokerage and agency as referred to in Article 13.9.5(c).

2. For the United States, Article 13.5.1 applies to the cross-border supply of or trade in financial services as defined in Article 13.19.2(c) with respect to insurance services.

Banking and other financial services (excluding insurance)

For the United States, Article 13.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in Article 13.19.5(o), and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in Article 13.19.5(p).

AUSTRALIA

Insurance and insurance-related services
1. For Australia, Article 13.5.1 applies to the cross-border supply of or trade in financial services as defined in Article 13.19.2(a) with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
(ii) goods in international transit;

(b) reinsurance and retrocession, and services auxiliary to insurance as referred to in Article 13.1.5(d); and

(c) insurance intermediation, such as brokerage and agency as referred to in Article 13.19.5(c) in relation to the services in sub-paragraphs (a) and (b).

Banking and other financial services (excluding insurance)

2. For Australia, Article 13.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in Article 13.19.5(o), and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in Article 13.19.5(p).

ANNEX 13-B Specific Commitments
Portfolio Management

1. A Party shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Articles 13.1 and 13.5.3.

2. For the purposes of paragraph 1, collective investment scheme means:

(a) in Australia, a managed investment scheme as defined under section 9 of the Corporations Act 2001, other than a managed investment scheme operated in contravention of subsection 601ED(5) of the Corporations Act 2001, or an entity that:

> (i) carries on a business of investment in securities, interests in land, or other investments; and
> (ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82) made on terms that the funds subscribed would be invested; and

(b) in the United States, an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. Related to Article 13.14 (Expedited Availability of Insurance Services)

3. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the McCarran-Ferguson Act, the United States welcomes the efforts of the National Association of Insurance Commissioners ("NAIC") relating to the availability of insurance services as expressed in the NAIC's "Statement of Intent: the Future of Insurance Regulation", including the initiatives on speed-to-market intentions and regulatory re-engineering (under Part II of the Statement of Intent). Regarding the speed-to market initiative, those U.S. states maintaining product filing requirements for particular lines of insurance shall operate their review process on an expeditious basis. All U.S. states are implementing mechanisms to allow electronic filing; in addition, many U.S. states also allow
file-and-use of products.

4. In Australia, insurance is currently regulated by authorizing and supervising insurers and not by approving products. In the event that Australia's system of insurance regulation was modified to include product approval, such approval would be done expeditiously.

ANNEX 13-C Authorities Responsible for Financial Services
The authority of each Party responsible for financial services is:

(a) for Australia, the Department of the Treasury; and
(b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in

coordination with the Department of Commerce and other agencies, for insurance services.

TELECOMMUNICATIONS

ARTICLE 12.1 : SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in telecommunications services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to measures that a Party adopts or maintains relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed as:
(a) requiring a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services are not offered to the public generally; or

(b) requiring a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

Section A: Access To And Use Of Public Telecommunications Services

ARTICLE 12.2 : ACCESS AND USE

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on terms and conditions that are reasonable and non-discriminatory (including with respect to timeliness), such as those set out in paragraphs 2 through 5.

2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party, or with circuits leased or owned by another enterprise;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party or any WTO Member.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or
(b) protect the technical integrity of public telecommunications networks or services.

Section B: Suppliers Of Public Telecommunications Services[39]

ARTICLE 12.3 : INTERCONNECTION

1. Each Party shall ensure suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

ARTICLE 12.4 : NUMBER PORTABILITY

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability for fixed telephony and any other service designated by that Party to the extent technically feasible, and on terms and conditions that are reasonable and nondiscriminatory (including with respect to timeliness).

ARTICLE 12.5 : DIALING PARITY
Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of the other Party, and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers and related services.

ARTICLE 12.6 : SUBMARINE CABLE SYSTEMS
Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate a submarine cable system as a public telecommunications service.

Section C : Conduct Of Major Suppliers Of Public Telecommunications Services[40, 41]

[39] For the purposes of this Chapter, Articles 12.4 and 12.5 do not apply to suppliers of commercial mobile services. In addition, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the United States Communications Act of 1934, as amended by the Telecommunications Act of 1996, from the obligations contained in Articles 12.4 and 12.5.

[40] For greater clarity, the obligations imposed under this Section only apply with respect to those public telecommunications services that result in a supplier of public telecommunications services being a major supplier.

[41] For the purposes of this Chapter, Section C does not apply to suppliers of commercial mobile services. In

ARTICLE 12.7 : TREATMENT BY MAJOR SUPPLIERS

Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party treatment no less favorable than such major suppliers accord in like circumstances to their subsidiaries, their affiliates, or non-affiliated service suppliers, regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

ARTICLE 12.8 : COMPETITIVE SAFEGUARDS

Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices, including in particular:

(a) engaging in anti-competitive cross-subsidization;
(b) using information obtained from competitors with anti-competitive results; and
(c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

ARTICLE 12.9 : RESALE

1. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates,[42] to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.[43]

2. Each Party may determine in accordance with its law and regulations which public telecommunications services must be offered for resale by major suppliers in accordance with paragraph 1, based on the need to promote competition or such other factors as the Party considers relevant.

---

addition, with respect to the United States, Section C does not apply to rural telephone companies, as defined in section 3(37) of the U.S. Communications Act of 1934, as amended by the Telecommunications Act of 1996, unless a state regulatory authority orders otherwise. A state regulatory authority may also exempt a rural local exchange carrier, as defined in section 251(f)(2) of the U.S. Communications Act of 1934, as amended by the Telecommunications Act of 1996, from the obligations contained in Section C.

[42] For the purposes of subparagraph (a): 1) a Party may determine reasonable rates through any methodology it considers appropriate; and 2) wholesale rates, set pursuant to a Party's law and regulations, shall be considered reasonable.

[43] Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

ARTICLE 12.10 : UNBUNDLING OF NETWORK ELEMENTS
Each Party shall provide its telecommunications regulatory body with the authority to require that major suppliers in its territory provide suppliers of public telecommunications services of the other Party access to network elements for the provision of public telecommunications services on an unbundled basis, and on terms and conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.

ARTICLE 12.11 : INTERCONNECTION
General Terms and Conditions
1. Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(c) of a quality no less favorable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their subsidiaries or other affiliates;

(d) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that suppliers seeking interconnection need not pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Options for Interconnecting with Major Suppliers
2. Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services;

(b) the terms and conditions of an existing interconnection agreement;

(c) through negotiation of a new interconnection agreement; or

(d) arbitration.

Public Availability of Interconnection Offers
3. Each Party shall ensure that major suppliers in its territory make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services.

Public Availability of Procedures for Interconnection Negotiations
4. Each Party shall ensure that applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

Public Availability of Terms and Conditions for Interconnection with Major Suppliers

5. Each Party shall ensure that the rates, terms, and conditions for interconnection with major suppliers:

(a) contained in reference interconnection offers or other standard interconnection offers approved by a telecommunications regulatory body; or

(b) determined by a telecommunications regulatory body through arbitration are made publicly available.

ARTICLE 12.12 : PROVISIONING AND PRICING OF LEASED CIRCUIT SERVICES

1. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunications services of the other Party leased circuit services that are public telecommunications services on terms and conditions, and at rates, that are reasonable, nondiscriminatory (including with respect to timeliness), and transparent.

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer such leased circuit services that are public telecommunications services to public telecommunications services suppliers of the other Party at capacity-based, cost-oriented prices.

ARTICLE 12.13 : CO-LOCATION

1. Subject to paragraphs 2 and 3, each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical collocation of equipment necessary for interconnection or access to unbundled network elements on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers facilitate alternative solutions, which may include:

(a) conditioning additional equipment space or providing virtual co-location, on terms and conditions, and at cost-oriented rates, that are reasonable, nondiscriminatory (including with respect to timeliness), and transparent;

(b) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;

(c) optimizing the use of existing space; or

(d) finding adjacent space.

3. Each Party may determine, in accordance with its law and regulations, which premises in its territory are subject to paragraphs 1 and 2.

ARTICLE 12.14 : ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS OF WAY

1. Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, and rights of way owned or controlled by such major suppliers to suppliers of public telecommunications services of the other Party on terms and conditions, and at cost-oriented44 rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

[44] In the United States, the obligation to provide cost-oriented rates does not apply to those states that regulate such rates as a matter of state law.

2. Nothing in this Chapter shall prevent a Party from determining, under its law and regulations, which particular structures owned or controlled by major suppliers in its territory are required to be made available in accordance with paragraph 1, provided that this determination is based on a conclusion that such structures cannot feasibly be economically or technically substituted in order to provide a competing service.

Section D : Other Measures

ARTICLE 12.15 : FLEXIBILITY IN THE CHOICE OF TECHNOLOGY

Neither Party may prevent suppliers of public telecommunications services or suppliers of value added services from choosing the technologies they wish to use to supply their services, including packet-based services and commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

ARTICLE 12.16 : CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES

1. Neither Party may require an enterprise in its territory that supplies value-added services over facilities that it does not own to:

(a) supply such services to the public generally;

(b) cost-justify its rates for such services;

(c) file a tariff for such services;

(d) interconnect its networks with any particular customer for the supply of such services; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network, except to remedy a practice that the Party has found in a particular case to be anti-competitive under its law or regulations or to otherwise promote competition or safeguard the interests of consumers.

2. For greater clarity, nothing in this Article shall exempt a Party from complying with the obligations in Articles 12.2 through 14.

ARTICLE 12.17 : INDEPENDENT REGULATORY BODIES AND DIVESTMENT

1. Each Party shall ensure that any telecommunications regulatory body that it establishes or maintains is independent and separate from, and not accountable to, any supplier of public telecommunications service.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that its regulatory body does not hold a financial interest in any supplier of public telecommunications services, and that any financial interest that the Party holds in a supplier of a public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. Where a Party has an ownership interest in a supplier of a public telecommunications service and it intends to reduce or eliminate that interest, it shall notify the other Party as soon as feasible.

ARTICLE 12.18 : UNIVERSAL SERVICE

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

ARTICLE 12.19 : REGULATORY PROCEDURES

1. Each Party shall ensure that rules, including the basis for such rulemaking, of its telecommunications regulatory body are promptly published or otherwise made available to all interested persons.

2. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:

(a) all the licensing criteria and procedures it applies, including any standard terms and conditions of the license;

(b) the time it normally requires to reach a decision concerning an application for a license; and

(c) the terms and conditions of all licenses it has issued.

3. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license.

4. Each Party shall ensure that tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested parties.

ARTICLE 12.20 : ALLOCATION AND USE OF SCARCE TELECOMMUNICATIONS RESOURCES

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent, and non-discriminatory manner.[45]

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies assigned for specific government uses.

3. For greater clarity, measures regarding the allocation and assignment of spectrum and regarding frequency management are not measures that are per se inconsistent with Article 10.4 (Market Access), which is applied to Chapter Eleven (Investment) through Article 10.1.3 (Scope and Coverage). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account current and future needs.

4. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial non-government telecommunications services.

[45] For greater clarity, telecommunications resources do not include spectrum allocated and used for the broadcast of radio and television programming.

ARTICLE 12.21 : ENFORCEMENT

1. Each Party shall provide its relevant regulatory body with the authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 12.2 through 12.7 and Articles 12.9 through 12.14.[46]

2. Such authority shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

ARTICLE 12.22 : RESOLUTION OF TELECOMMUNICATIONS DISPUTES AND APPEAL PROCESSES

Further to Articles 20.4 (Administrative Agency Processes) and 20.5 (Review and Appeal), each Party shall ensure that:

(a) enterprises of the other Party may seek timely review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 12.2 through 12.7 and Articles 12.9 through 12.14;

(b) suppliers of public telecommunications of the other Party that have requested interconnection with a major supplier in the Party's territory will have recourse to a telecommunications regulatory body:[47]

(i) at any time; or
(ii) after a reasonable and publicly specified period, to review disputes regarding appropriate terms, conditions, and rates for interconnection;

(c) any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an impartial and independent judicial authority. An application for judicial review shall not constitute grounds for non-compliance with such a determination or decision unless stayed by the relevant judicial body.

ARTICLE 12.23 : FORBEARANCE[48]

1. The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forebear from applying a regulation or other measure, to the extent provided for in the Party's law, to a service that the Party classifies as a public telecommunications service if its telecommunications regulatory body determines that:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers;

---

[46] For the purpose of Australia's obligations under this Chapter, notwithstanding this paragraph, a supplier of public telecommunications services may be required to apply to a judicial body for the enforcement of a determination by a regulatory body in relation to the resolution of a dispute under a domestic measure relating to the obligations in Article 12.11.

[47] In the United States, this body may be a state regulatory authority.

[48] For the purposes of this Agreement, the extent to which the United States telecommunications regulatory body may forbear is governed by section 10 of the U.S. Communications Act of 1934, as amended by the Telecommunications Act of 1996.

and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

2. Each Party shall provide interested persons of the other Party adequate public notice and opportunity to comment before the Party's telecommunication regulatory body makes any decision regarding forbearance.

3. Each Party shall ensure that any enterprise aggrieved by a decision of the Party's regulatory body regarding forbearance may obtain judicial review of such decision by an independent and impartial judicial authority.

ARTICLE 12.24 : RELATIONSHIP TO OTHER CHAPTERS
In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

ARTICLE 12.25 : DEFINITIONS
For the purposes of this Chapter:

1. commercial mobile services means public telecommunications services supplied through mobile wireless means;

2. cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

3. dialing parity means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user and in a way that involves no unreasonable dialing delays;

4. end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

5. essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers, and

(b) cannot feasibly be economically or technically substituted in order to provide a service;

6. interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with the users of another supplier and to access services provided by another supplier;

7. leased circuit means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular customer or other users;

8. major supplier means a supplier of a public telecommunications service that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of control over essential facilities or use of its position in the market;

9. network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such a facility or equipment;

10. non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

11. number portability means the ability of end-users of public telecommunications services to retain, at the same location, existing telephone numbers when switching between suppliers of like public telecommunications services;

12. physical co-location means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to supply public telecommunications services;

13. public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;[49]

14. telecommunications means the transmission and reception of signals by any electromagnetic means;

15. telecommunications regulatory body means a central level body responsible for the regulation of telecommunications;

16. user means an end-user or a supplier of public telecommunications services; and

17. value-added services means services that add value to telecommunications services through enhanced functionality. More specifically, with respect to the obligations of the United States under this Chapter, these are services as defined in 47 USC § 153(20), and with respect to the obligations of Australia under this Chapter, value-added services are telecommunications services for which suppliers "add value" to customer information by enhancing its form or content or by providing for its storage and retrieval.

ARTICLE 10.12 : SPECIFIC COMMITMENTS

EXPRESS DELIVERY SERVICES

1. For the purposes of this Chapter, express delivery services means the collection, transport, and delivery, of documents, printed matter, parcels, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, as defined in Article 1.2.22, or (iii) maritime transport services.[50]

---

[49] Because the United States does not classify services described in 47 USC § 153(20) as public telecommunications services, these services are not considered public telecommunications services for the purposes of this Agreement. This does not prejudice either Party's position in the WTO on the scope and definition of these services.

[50] For greater clarity, express delivery services do not include:
(a) for the United States, delivery of letters subject to the Private Express Statutes (18 U.S.C. 1693 et seq., 39 U.S.C. 601 et seq.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters; and
(b) for Australia, services reserved for exclusive supply by Australia Post as set out in the Australian Postal Corporation Act 1989 and its subordinate legislation and regulations.

2. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that is in existence on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.

3. Each Party confirms its intention to prevent the direction of revenues derived from monopoly postal services to confer an advantage to its own or any other competitive supplier's express delivery services in a manner inconsistent with that Party's laws and practices applicable to the monopoly supply of postal services.

4. For greater certainty, this Agreement, including Articles 14.3 (Designated Monopolies) and 14.5 (State Enterprises and Related Matters), applies to express delivery services.

ARTICLE 6.10 : EXPRESS SHIPMENTS

Each Party shall adopt or maintain separate, expedited customs procedures for express shipments, while maintaining appropriate customs control and selection, including procedures:

(a) under which the information necessary for the release of an express shipment may be submitted and processed by the Party's customs authorities before the shipment arrives;

(b) allowing a shipper to submit a single manifest covering all goods contained in a shipment transported by the express shipment service through, if possible, electronic means;

(c) that, to the extent possible, minimise the documentation required for the release of express shipments; and

(d) that, under normal circumstances, allow for an express shipment that has arrived at a point of entry to be released no later than six hours after the information necessary for release is submitted.

TRANSPARENCY

Chapter L Publication, Notification and Administration of Laws

Article L-01: Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article L-02: Publication

Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and
(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article L-03: Notification and Provision of Information

To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article L-04: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article L-02 to particular persons, goods or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
(c) its procedures are in accordance with domestic law.

Article L-05: Review and Appeal

Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and
(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implement govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article L-06: Definitions
For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situa generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or serv Party in a specific case; or
(b) a ruling that adjudicates with respect to a particular act or practice.

CHAPTER E CUSTOMS PROCEDURES

Section I - Certification of Origin Article E-01: Certificate of Origin
The Parties shall establish by the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.

Each Party may require that a Certificate of Origin for a good imported into its territory be completed in a language required under its law.

Each Party shall:

(a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment on importation of the good into the territory of the other Party; and
(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate on the basis of
    (i) its knowledge of whether the good qualifies as an originating good,
    (ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good, or
    (iii) a completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

Nothing in paragraph 3 shall be construed to require a producer to provide a Certificate of Origin to an exporter.

Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter or a producer in the territory of the other Party that is applicable to:

(a) a single importation of a good into the Party's territory; or

(b)multiple importations of identical goods into the Party's territory that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer,
shall be accepted by its customs administration for four years after the date on which the Certificate was signed.
For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Certificate of Origin that has been completed and signed prior to that date by the exporter or producer of that good.

Article E-02: Obligations Regarding Importations
Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;
(b) have the Certificate in its possession at the time the declaration is made;
(c) provide, on the request of that Party's customs administration, a copy of the Certificate; and
(d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

Each Party shall provide that, where an importer in its territory claims preferential tariff treatment for a good imported into its territory from the territory of the other Party:

(a) the Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and
(b) the importer shall not be subject to penalties for the making of an incorrect declaration, if it voluntarily makes a corrected declaration pursuant to paragraph 1(d).

Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:

(a) a written declaration that the good qualified as an originating good at the time of importation;
(b) a copy of the Certificate of Origin; and
(c) such other documentation relating to the importation of the good as that Party may require.

Article E-03: Exceptions
Each Party shall provide that a Certificate of Origin shall not be required for:

(a) a commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good;
(b) a non-commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish; or
(c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin,
provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles E-01 and E-02.

Article E-04: Obligations Regarding Exportations
Each Party shall provide that:

(a) an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to that exporter pursuant to Article E-01(3)(b)(iii), shall provide a copy of the Certificate to its customs administration on request; and
(b) an exporter or a producer in its territory that has completed and signed a Certificate of Origin, and that has reason to believe that the Certificate contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

Each Party:

(a) shall provide that a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation; and
(b) may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

Neither Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph (1)(b) with respect to the making of an incorrect certification.

Section II - Administration and Enforcement
Article E-05: Records
Each Party shall provide that:

(a) an exporter or a producer in its territory that completes and signs a Certificate of Origin shall maintain in its territory, for five years after the date on which the Certificate was signed or for such longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with
    (i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory,
    (ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and
    (iii) the production of the good in the form in which the good is exported from its territory; and
(b) an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate, as the Party may require relating to the importation of the good.

Article E-06: Origin Verifications
For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, a Party may, through its customs administration, conduct a verification solely by means of:

(a) written questionnaires to an exporter or a producer in the territory of the other Party;
(b) visits to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article E-05(a) and observe the facilities used in the production of the good; or
(c) such other procedure as the Parties may agree.

Prior to conducting a verification visit pursuant to paragraph (1)(b), a Party shall, through its customs administration:

(a) deliver a written notification of its intention to conduct the visit to
    (i) the exporter or producer whose premises are to be visited,
    (ii) the customs administration of the other Party, and
    (iii) if requested by the other Party, the embassy of the other Party in the territory of the Party proposing to conduct the visit; and
(b) obtain the written consent of the exporter or producer whose premises are to be visited.

The notification referred to in paragraph 2 shall include:

(a) the identity of the customs administration issuing the notification;
(b) the name of the exporter or producer whose premises are to be visited;
(c) the date and place of the proposed verification visit;
(d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;
(e) the names and titles of the officials performing the verification visit; and
(f) the legal authority for the verification visit.

Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 2, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 2, the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree.

A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 5.

Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to designate two observers to be present during the visit, provided that:

(a) the observers do not participate in a manner other than as observers; and
(b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

Each Party shall, through its customs administration, where conducting a verification of origin involving a regional value content, de minimis calculation or any other provision in Chapter D (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, apply such principles as are applicable in the territory of the Party from which the good was exported.

The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter D (Rules of Origin).

Each Party shall provide that where it determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the other Party, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.

A Party shall not apply a determination made under paragraph 11 to an importation made before the effective date of the determination where:

(a) the customs administration of the other Party has issued an advance ruling under Article E-09 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and
(b) the advance ruling, other ruling or consistent treatment was given prior to notification of the determination.

If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 11, it shall postpone the effective date of the denial for a period not exceeding 90 days where the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the other Party.

Article E-07: Confidentiality
Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

The confidential business information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters.

Article E-08: Penalties
Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

Nothing in Article E-02(2), E-04(3) or E-06(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Section III - Advance Rulings
Article E-09: Advance Rulings
Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

(a) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex D-01 as a result of production occurring entirely in the territory of one or both of the Parties;
(b) whether a good satisfies a regional value-content requirement under either the transaction value method or the net cost method set out in Chapter D (Rules of Origin);
(c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter D, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of the other Party, in

accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good;
(d) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter D, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods setout in the Uniform Regulations, for calculating the net cost of the good or the value of an intermediate material;
(e) whether a good qualifies as an originating good under Chapter D;
(f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article C-06 (Goods Re-Entered after Repair or Alteration);
(g) whether a good referred to in Annex C-00-B (Textiles and Apparel Goods) satisfies the conditions set out in Appendix 5.1 of that Annex regarding eligibility for a tariff preference level (TPL) referred to therein; or
(h) such other matters as the Parties may agree.

Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.

Each Party shall provide that its customs administration:

(a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
(b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within the periods specified in the Uniform Regulations; and
(c) shall, where the advance ruling is unfavourable to the person requesting it, provide to that person a full explanation of the reasons for the ruling.

Subject to paragraph 6, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.

Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter D regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

The issuing Party may modify or revoke an advance ruling:

(a) if the ruling is based on an error
  (i) of fact,
  (ii) in the tariff classification of a good or a material that is the subject of the ruling,
  (iii) in the application of a regional value-content requirement under Chapter D, or
  (iv) in the application of the rules for determining whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article C-06;
(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter C (National Treatment and Market Access for Goods) or Chapter D;
(c) if there is a change in the material facts or circumstances on which the ruling is based;
(d) to conform with a modification of Chapter C, Chapter D, this Chapter or the Uniform Regulations; or
(e) to conform with a judicial decision or a change in its domestic law.

Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

Notwithstanding paragraph 7, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

Each Party shall provide that where its customs administration examines the regional value content of a good for which it has issued an advance ruling pursuant to subparagraph 1(c), (d) or (f), it shall evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advance ruling;
(b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advance ruling is based; and
(c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

Each Party shall provide that where its customs administration determines that any requirement in paragraph 9 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

Each Party shall provide that, where the person to whom an advance ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, and where the customs administration of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties.

Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply such measures as the circumstances may warrant.

Section IV - Review and Appeal of Origin Determinations and Advance Rulings
Article E-10: Review and Appeal
Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings by its customs administration as it provides to importers in its territory to any person:

(a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin; or
(b) who has received an advance ruling pursuant to Article E-09(1).

Further to Articles L-04 (Administrative Proceedings) and L-05 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

(a) at least one level of administrative review independent of the official or office responsible for the determination under review; and
(b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

Section V - Uniform Regulations
Article E-11: Uniform Regulations

The Parties shall establish, and implement through their respective laws or regulations by the date of entry into force of this Agreement, and at any time thereafter, upon agreement of the Parties, Uniform Regulations regarding the interpretation, application and administration of Chapter D, this Chapter and other matters as may be agreed by the Parties.

Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Section VI - Cooperation
Article E-12: Cooperation
Each Party shall notify the other Party of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

(a) a determination of origin issued as the result of a verification conducted pursuant to Article E-06(1);
(b) a determination of origin that the Party is aware is contrary to
(i) a ruling issued by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin, or
(ii) consistent treatment given by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;
(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and
(d) an advance ruling, or a ruling modifying or revoking an advance ruling, pursuant to Article E-09.

The Parties shall cooperate:

(a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;
(b) for purposes of the detection and prevention of unlawful transshipments of textile and apparel goods of a non-Party, in the enforcement of prohibitions or quantitative restrictions, including the verification by a Party, in accordance with the procedures set out in this Chapter, of the capacity for production of goods by an exporter or a producer in the territory of the other Party, provided that the customs administration of the Party proposing to conduct the verification, prior to conducting the verification
(i) obtains the consent of the other Party, and
(ii) provides notification to the exporter or producer whose premises are to be visited,
except that procedures for notifying the exporter or producer whose premises are to be visited shall be in accordance with such other procedures as the Parties may agree;
(c) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information; and
(d) to the extent practicable, in the storage and transmission of customs-related documentation.

Article E-13: The Customs Sub-Committee
The Parties hereby establish a Customs Sub-Committee, comprising representatives of each Party's customs administration. The Sub-Committee shall meet at least once each year, and at any other time on the request of either Party and shall:

(a) endeavour to agree on
(i) the uniform interpretation, application and administration of Article C-04, C-05 and C-06, Chapter D, this Chapter, and the Uniform Regulations,
(ii) tariff classification and valuation matters relating to determinations of origin,
(iii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,
(iv) revisions to the Certificate of Origin,
(v) any other matter referred to it by a Party or the Committee on Trade in Goods and Rules of Origin established under Article C-15(1), and
(vi) any other customs-related matter arising under this Agreement;
(b) consider
(i) the harmonization of customs-related automation requirements and documentation, and
(ii) proposed customs-related administrative and operational changes that may affect the flow of trade between the Parties' territories;
(c) report periodically to the Committee on Trade in Goods and Rules of Origin and notify it of any agreement reached under this paragraph; and
(d) refer to the Committee on Trade in Goods and Rules of Origin any matter on which it has been unable to reach agreement within 60 days of referral of the matter to it pursuant to subparagraph (a)(v).
Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Customs Sub-Committee or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.

Article E-14: Definitions

For purposes of this Chapter:

commercial importation means the importation of a good into the territory of a Party for the purpose of sale, or any commercial, industrial or other like use;
customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;
determination of origin[1] means a determination as to whether a good qualifies as an originating good in accordance with Chapter D;
exporter in the territory of a Party means an exporter located in the territory of a Party and an exporter required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;
identical goods means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter D;
importer in the territory of a Party means an importer located in the territory of a Party and an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good;
intermediate material means "intermediate material" as defined in Article D-16;
material means "material" as defined in Article D-16;
net cost of a good means "net cost of a good" as defined in Article D-16;
preferential tariff treatment means the duty rate applicable to an originating good;
producer means "producer" as defined in Article D-16;

[1] The Uniform Regulations will clarify that “determination of origin” includes a denial of preferential tariff treatment under Article E-06(4) and that such denial is subject to review and appeal.

production means "production" as defined in Article D-16;
transaction value means "transaction value" as defined in Article D-16;
Uniform Regulations means "Uniform Regulations" established under Article E-11;
used means "used" as defined in Article D-16; and
value means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter D.

MARKET ACCESS OF TRADE IN GOODS

Section I - National Treatment
Article C-01: National Treatment
Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes, and to this end Article III of the GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

The provisions of paragraph 1 regarding national treatment shall mean, with respect to a province, treatment no less favorable than the most favorable treatment accorded by such province to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part[2].

Paragraphs 1 and 2 do not apply to the measures set out in Annex C-01.3.

Section II - Tariffs
Article C-02: Tariff Elimination[3]
Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any customs duty, on a good[4].

Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on goods in accordance with its Schedule to Annex C-02.2[5].

On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.

Except as otherwise provided in this Agreement, either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex C-02.2, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

On written request of either Party, a Party applying or intending to apply measures pursuant to paragraph 4 shall consult to review the administration of those measures.

[2] A good of a Party may include materials of other countries.
[3] For the purpose of Article C-02, a good may refer to an originating good or a good which benefits from tariff elimination under a TPL.
[4] This paragraph is not intended to prevent either Party from modifying its tariffs outside this Agreement on goods for which no tariff preference is claimed under this Agreement. This paragraph does not prevent either Party from raising a tariff back to an agreed level in accordance with the phase-out schedule in the Agreement following a unilateral reduction.
[5] Paragraphs 1 and 2 of this Article are not intended to prevent either Party from maintaining or increasing a customs duty as may be authorized by any dispute settlement provision of the WTO Agreement or any agreement under the WTO Agreement.

ARTICLE 4 TRADE IN SERVICES
With a view to expediting the expansion of trade in services, the Parties agree to enter into negotiations to progressively liberalise trade in services with substantial sectoral coverage. Such negotiations shall be directed to:

(a) progressive elimination of substantially all discrimination between or among the Parties and/or prohibition of new or more discriminatory measures with respect to trade in services between the Parties, except for measures permitted under Article V(1)(b) of the WTO General Agreement on Trade in Services (GATS);

(b) expansion in the depth and scope of liberalisation of trade in services beyond those undertaken by ASEAN Member States and China under the GATS; and

(c) enhanced co-operation in services between the Parties in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties.

ARTICLE 21 DISPUTE SETTLEMENT
The Agreement on Dispute Settlement Mechanism between ASEAN and China shall apply to this Agreement.

ARTICLE 7 OTHER AREAS OF ECONOMIC CO-OPERATION
1. The Parties agree to strengthen their co-operation in 5 priority sectors as follows:
(a) agriculture;
(b) information and communications technology;
(c) human resources development;
(d) investment; and
(e) Mekong River basin development.

2. Co-operation shall be extended to other areas, including, but not limited to, banking, finance, tourism, industrial co-operation, transport, telecommunications, intellectual property rights, small and medium enterprises (SMEs), environment, bio-technology, fishery, forestry and forestry products, mining, energy and sub-regional development.

3. Measures to strengthen co-operation shall include, but shall not be limited to:

(a) promotion and facilitation of trade in goods and services, and investment, such as:
(i) standards and conformity assessment;
(ii) technical barriers to trade/non-tariff measures; and
(iii)customs co-operation;
(b) increasing the competitiveness of SMEs;
(c) promotion of electronic commerce;
(d) capacity building; and

(e) technology transfer.

4. The Parties agree to implement capacity building programmes and technical assistance, particularly for the newer ASEAN Member States, in order to adjust their economic structure and expand their trade and investment with China.

ARTICLE 3 TRADE IN GOODS
1. In addition to the Early Harvest Programme under Article 6 of this Agreement, and with a view to expediting the expansion of trade in goods, the Parties agree to enter into negotiations in which duties and other restrictive regulations of

commerce (except, where necessary, those permitted under Article XXIV (8)(b) of the WTO General Agreement on Tariffs and Trade (GATT)) shall be eliminated on substantially all trade in goods between the Parties.

2. For the purposes of this Article, the following definitions shall apply unless the context otherwise requires:

(a) "ASEAN 6" refers to Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand;

(b) "applied MFN tariff rates" shall include in-quota rates, and shall:

(i) in the case of ASEAN Member States (which are WTO members as of 1 July 2003) and China, refer to their respective applied rates as of 1 July 2003; and

(ii) in the case of ASEAN Member States (which are non-WTO members as of 1 July 2003), refer to the rates as applied to China as of 1 July 2003;

(c) "non-tariff measures" shall include non-tariff barriers.

3. The tariff reduction or elimination programme of the Parties shall require tariffs on listed products to be gradually reduced and where applicable, eliminated, in accordance with this Article.

4. The products which are subject to the tariff reduction or elimination programme under this Article shall include all products not covered by the Early Harvest Programme under Article 6 of this Agreement, and such products shall be categorised into 2 Tracks as follows:

(a) Normal Track: Products listed in the Normal Track by a Party on its own accord shall:

(i) have their respective applied MFN tariff rates gradually reduced or eliminated in accordance with specified schedules and rates (to be mutually agreed by the Parties) over a period from 1 January 2005 to 2010 for ASEAN 6 and China, and in the case of the newer ASEAN Member States, the period shall be from 1 January 2005 to 2015 with higher starting tariff rates and different staging; and

(ii) in respect of those tariffs which have been reduced but have not been eliminated under paragraph 4(a)(i) above, they shall be progressively eliminated within timeframes to be mutually agreed between the Parties.

(b) Sensitive Track: Products listed in the Sensitive Track by a Party on its own accord shall:

(i) have their respective applied MFN tariff rates reduced in accordance with the mutually agreed end rates and end dates; and

(ii) where applicable, have their respective applied MFN tariff rates progressively eliminated within timeframes to be mutually agreed between the Parties.

5. The number of products listed in the Sensitive Track shall be subject to a maximum ceiling to be mutually agreed among the Parties.

6. The commitments undertaken by the Parties under this Article and Article 6 of this Agreement shall fulfil the WTO requirements to eliminate tariffs on substantially all the trade between the Parties.

7. The specified tariff rates to be mutually agreed between the Parties pursuant to this Article shall set out only the limits of the applicable tariff rates or range for the specified year of implementation by the Parties and shall not prevent any Party from accelerating its tariff reduction or elimination if it so wishes to.

8. The negotiations between the Parties to establish the ASEAN-China FTA covering trade in goods shall also include, but not be limited to the following:

(a) other detailed rules governing the tariff reduction or elimination programme for the Normal Track and the Sensitive Track as well as any other related matters, including principles governing reciprocal commitments, not provided for in the preceding paragraphs of this Article;
(b) Rules of Origin;
(c) treatment of out-of-quota rates;
(d) modification of a Party's commitments under the agreement on trade in goods based on Article XXVIII of the GATT;
(e) non-tariff measures imposed on any products covered under this Article or Article 6 of this Agreement, including, but not limited to quantitative restrictions or prohibition on the importation of any product or on the export or sale for export of any product, as well as scientifically unjustifiable sanitary and phytosanitary measures and technical barriers to trade;
(f) safeguards based on the GATT principles, including, but not limited to the following elements: transparency, coverage, objective criteria for action, including the concept of serious injury or threat thereof, and temporary nature;
(g) disciplines on subsidies and countervailing measures and anti-dumping measures based on the existing GATT disciplines; and
(h) facilitation and promotion of effective and adequate protection of trade-related aspects of intellectual property rights based on existing WTO, World Intellectual Property Organization (WIPO) and other relevant disciplines.

ARTICLE 5 INVESTMENT

To promote investments and to create a liberal, facilitative, transparent and competitive investment regime, the Parties agree to:

a) enter into negotiations in order to progressively liberalise the investment regime;
(b) strengthen co-operation in investment, facilitate investment and improve transparency of investment rules and regulations; and
(c) provide for the protection of investments.

ARTICLE 6 EARLY HARVEST

1. With a view to accelerating the implementation of this Agreement, the Parties agree to implement an Early Harvest Programme (which is an integral part of the ASEAN-China FTA) for products covered under paragraph 3(a) below and which will commence and end in accordance with the timeframes set out in this Article.

2. For the purposes of this Article, the following definitions shall apply unless the context otherwise requires:
(a) "ASEAN 6" refers to Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand;
(b) "applied MFN tariff rates" shall include in-quota rates, and shall:
(i) in the case of ASEAN Member States (which are WTO members as of 1 July 2003) and China, refer to their respective applied rates as of 1 July 2003; and
(ii) in the case of ASEAN Member States (which are non-WTO members as of 1 July 2003), refer to the tariff rates as applied to China as of 1 July 2003.

3. The product coverage, tariff reduction and elimination, implementation timeframes, rules of origin, trade remedies and emergency measures applicable to the Early Harvest Programme shall be as follows:
(a) Product Coverage
(i) All products in the following chapters at the 8/9 digit level (HS Code) shall be covered by the Early Harvest Programme, unless otherwise excluded by a Party in its Exclusion List as set out in Annex 1 of this Agreement, in which case these products shall be exempted for that Party:

Chapter	Description
01	Live Animals
02	Meat and Edible Meat Offal
03	Fish
04	Dairy Produce
05	Other Animals Products
06	Live Trees
07	Edible Vegetables
08	Edible Fruits and Nuts

(ii) A Party which has placed products in the Exclusion List may, at any time, amend the Exclusion List to place one or more of these products under the Early Harvest Programme.

(iii) The specific products set out in Annex 2 of this Agreement shall be covered by the Early Harvest Programme and the tariff concessions shall apply only to the parties indicated in Annex 2. These parties must have extended the tariff concessions on these products to each other.

(iv) For those parties which are unable to complete the appropriate product lists in Annex 1 or Annex 2, the lists may still be drawn up no later than 1 March 2003 by mutual agreement.

(b) Tariff Reduction and Elimination

(i) All products covered under the Early Harvest Programme shall be divided into 3 product categories for tariff reduction and elimination as defined and to be implemented in accordance with the timeframes set out in Annex 3 to this Agreement. This paragraph shall not prevent any Party from accelerating its tariff reduction or elimination if it so wishes.

(ii) All products where the applied MFN tariff rates are at 0%, shall remain at 0%.

(iii) Where the implemented tariff rates are reduced to 0%, they shall remain at 0%.

(iv) A Party shall enjoy the tariff concessions of all the other parties for a product covered under paragraph 3(a)(i) above so long as the same product of that Party remains in the Early Harvest Programme under paragraph 3(a)(i) above.

(c) Interim Rules of Origin

The Interim Rules of Origin applicable to the products covered under the Early Harvest Programme shall be negotiated and completed by July 2003. The Interim Rules of Origin shall be superseded and replaced by the Rules of Origin to be negotiated and implemented by the Parties under Article 3(8)(b) of this Agreement.

(d) Application of WTO provisions

The WTO provisions governing modification of commitments, safeguard actions, emergency measures and other trade remedies, including anti-dumping and subsidies and countervailing measures, shall, in the interim, be applicable to the products covered under the Early Harvest Programme and shall be superseded and replaced by the relevant disciplines negotiated and agreed to by the Parties under Article 3(8) of this Agreement once these disciplines are implemented.

4. In addition to the Early Harvest Programme for trade in goods as provided for in the preceding paragraphs of this Article, the Parties will explore the feasibility of an early harvest programme for trade in services in early 2003.

5. With a view to promoting economic co-operation between the Parties, the activities set out in Annex 4 of this Agreement shall be undertaken or implemented on an accelerated basis, as the case may be.

AGREEMENT ON TRADE IN GOODS OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC COOPERATION BETWEEN ASEAN AND PEOPLE'S REPUBLIC OF CHINA

ARTICLE 4 TRANSPARENCY

Article X of the GATT 1994 shall, mutatis mutandis, be incorporated into and form an integral part of this Agreement.

ARTICLE 7 WTO DISCIPLINES

1. Subject to the provisions of this Agreement and any future agreements as may be agreed pursuant to reviews of this Agreement by the Parties under Article 17 of this Agreement, the Parties1[1] hereby agree and reaffirm their commitments to abide by the provisions of the WTO disciplines on, among others, non-tariff measures, technical barriers to trade, sanitary and phytosanitary measures, subsidies and countervailing measures, anti-dumping measures and **intellectual property rights.**

2. The provisions of the WTO Multilateral Agreements on Trade in Goods, which are not specifically mentioned in or modified by this Agreement, shall apply, mutatis mutandis, to this Agreement unless the context otherwise requires.

ARTICLE 17 REVIEW

1. The AEM-MOFCOM or their designated representatives shall meet within a year of the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement for the purpose of considering further measures to liberalise trade in goods as well as develop disciplines and negotiate agreements on matters referred to in Article 7 of this Agreement or any other relevant matters as may be agreed.

2. The Parties shall, taking into account their respective experience in the implementation of this Agreement, review the Sensitive Track in 2008 with a view to improving the market access condition of sensitive products, including the further possible reduction of the number of products in the Sensitive Track and the conditions governing the reciprocal tariff rate treatment of products placed by a Party in the Sensitive Track.

CHAPTER IX TRANSPARENCY

Article 72 Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. Upon request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 73 Publication

1. Each Party shall ensure that its measures respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons of the other Party and the other Party to become acquainted with them.

2. To the extent possible, each Party shall provide a reasonable period for the other Party and interested persons of the other Party to comment to the appropriate authorities before the aforementioned laws, regulations, procedures and administrative rulings of general application are implemented.

Article 74 Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any actual measure or proposed measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's legitimate interests under this Agreement.

2. Upon request of the other Party, to the extent possible, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, that the other Party considers might materially affect the operation of this Agreement or otherwise substantially affect its legitimate interests under this Agreement**,** whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

4**.** The information referred to under this Article shall be considered to have been provided when it has been made available by appropriate notification to the WTO or when it has been made available on the official, public and fee-free accessible website of the Party concerned.

Article 75 Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 73 to particular persons or goods of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 76 Review and Appeal

1. Each Party shall establish or maintain tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions relating to the implementation of laws, regulations, procedures, and administrative rulings of general application respecting any matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action that is the subject of the decision.

Article 77 Relation with other Chapters

1. This Chapter will not apply to Chapter XIII.

2. In the event of any inconsistency between this Chapter and another Chapter in this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

Article 78 Definitions

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding ,where applicable, that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice; and

measures means laws, regulations, procedures, and administrative rulings of general application.

Chapter X Dispute Settlement

Article 79 Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 80 Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; and

(b) wherever a Party considers that a measure of the other Party is inconsistent with the obligations of this Agreement or that the other Party has failed to carry out its obligations under this Agreement.

Article 81 Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which both Parties are parties or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

Article 82 Consultations

1. Either Party may request in writing consultations with the other Party with respect to any measure that it considers might affect the operation of this Agreement.

2. The requesting Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and shall deliver the request to the other Party.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

4. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

5. The consultations shall be confidential and are without prejudice to the rights of any Party in any further proceedings.

Article 83 Commission - Good Offices, Conciliation, and Mediation

1. A Party may request in writing a meeting of the Commission if the Parties fail to resolve a matter pursuant to Article 82 within:

(a) 60 days of receipt of a request for consultations;
(b) 15 days of receipt of a request for consultations in matters regarding perishable goods; or
(c) such other period as they may agree.

2. A Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 58 or 69.

3. The requesting Party shall state in the request the measure complained of and the provisions of this Agreement considered relevant and deliver the request to the other Party.

4. Unless it decides otherwise, the Commission shall convene within 10 days of receipt of the request and shall endeavor to resolve the dispute promptly. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation; or

(c) make recommendations, as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

5. The proceedings under this Article and the positions taken by the Parties during these proceedings shall be confidential and are without prejudice to the rights of any Party in any further proceedings.

Article 84 Request for an Arbitral Panel

1. If the Parties fail to resolve a matter within:

(a) 30 days of the Commission convening pursuant to Article 83;

(b) 75 days after receipt of the request for consultations under Article 82, if the Commission has not convened pursuant to Article 83;

(c) 30 days after receipt of the request for consultations under Article 82 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 83; or

(d) such other period as the Parties agree, either Party may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall state in the request the measure complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Party. An arbitral panel shall be established upon receipt of a request.

2. Unless the Parties otherwise agree, the arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 85 Composition of an Arbitral Panel

1. An arbitral panel shall comprise three members.

2. In the written request under Article 84, the Party requesting the establishment of an arbitral panel shall designate one member of that arbitral panel.

3. Within 15 days of the receipt of the request referred to in paragraph 2, the Party to which it was addressed shall designate one member of the arbitral panel.

4. The Parties shall designate by common agreement the appointment of the third panelist within 15 days of the appointment of the second panelist. The panelist thus appointed shall chair the arbitral panel.

5. If any member of the arbitral panel has not been designated or appointed within 30 days from the date of receipt of the request referred to in paragraph 2, at the request of any Party to the dispute the necessary designations shall be made by the Director-General of the WTO within a further 30 days.

6. The Chair of the arbitral panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed by any of the Parties, nor have dealt with the matter in any capacity.

7. All panelists shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO.

8. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 83.

9. If a panelist appointed under this Article resigns or becomes unable to act, a successor panelist shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original panelist and the successor shall have all the powers and duties of the original panelist. The work of the arbitral panel shall be suspended during the appointment of the successor panelist.

Article 86 Functions of Arbitral Panel

1. The function of an arbitral panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Where an arbitral panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement. In addition to its recommendations the arbitral panel may suggest ways in which the responding Party could implement the recommendations.

3. The arbitral panel, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

Article 87 Rules of Procedure of an Arbitral Panel

1. Unless the Parties agree otherwise, the arbitral panel proceedings shall be conducted in accordance with the rules of procedure set out in Annex 7.

2. The arbitral panel shall, apart from the matters set out in this Article, regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations in consultation with the Parties.

3. The arbitral panel shall take its decisions by consensus; provided that where an arbitral panel is unable to reach consensus it may take its decisions by majority vote.

4. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral panel pursuant to Article 84 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

5. Each Party shall bear the cost of its appointed panelist and its own expenses. The cost of the chair of an arbitral panel and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

Article 88 Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral panel has been suspended for more than 12 months, the authority for establishment of the arbitral panel shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral panel in the event that a mutually satisfactory solution to the dispute has been found.

Article 89 Experts and Technical Advice

1. On its own initiative unless the Parties disapprove, or upon request of a Party, the arbitral panel may seek information and technical advice on matters raised by a Party in a proceeding, from any person or body that it deems appropriate.

2. Before an arbitral panel seeks information or technical advice, it shall establish appropriate procedures in consultation with the Parties. The arbitral panel shall provide the Parties:

(a) advance notice of, and an opportunity to provide comments to the arbitral panel on, proposed requests for information and technical advice pursuant to paragraph 1; and

(b) a copy of any information or technical advice submitted in response to a request pursuant to paragraph 1 and an opportunity to provide comments.

3. Where the arbitral panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

Article 90 Initial Report

1. The arbitral panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties.

2. Unless the Parties otherwise agree, the arbitral panel shall:

(a) within 120 days after the last panelist is selected; or

(b) in case of urgency including those relating to perishable goods within 60 days after the last panelist is selected, present to the Parties an initial report.

3. The initial report shall contain:

(a) findings of fact;

(b) its conclusions as to whether a Party has not conformed with its obligations under this Agreement or any other determination if requested in the terms of reference; and

(c) the recommendation of the arbitral panel on the dispute and the suggestions if requested by the Parties.

4. In exceptional cases, if the arbitral panel considers it cannot release its initial report within 120 days, or within 60 days in cases of urgency, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

5. Panelists may furnish separate opinions on matters not unanimously agreed.

6. A Party may submit written comments to the arbitral panel on its initial report within 14 days of presentation of the report or within such other period as the Parties may agree.

7. After considering any written comments on the initial report, the arbitral panel may reconsider its report and make any further examination it considers appropriate.

Article 91 Final Report
1. The arbitral panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree. The final report shall be available to the public within 15 days thereafter, subject to the protection of confidential information.

2. No arbitral panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 92 Implementation of Final Report
1. On receipt of the final report of an arbitral panel, the Parties shall agree on the resolution of the dispute.

2. If in its final report the arbitral panel concludes that a Party has not conformed with its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.

3. Unless the Parties decide otherwise, they shall implement the recommendations contained in the final report of the arbitral panel within a reasonable period of time if it is not practicable to comply immediately.

4. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral panel's report, either Party may, to the extent possible, refer the matter to the original arbitral panel, which shall determine the reasonable period of time following consultation with the Parties.

5. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the recommendations of the arbitral panel, such dispute shall be referred to an arbitral panel proceeding, including wherever possible by resort to the original arbitral panel.

6. The arbitral panel shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

Article 93 Non-Implementation - Suspension of Benefits
1. If the Party concerned fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the arbitral panel under Article 90 within the reasonable period of time established in accordance with Article 92, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If there is no agreement in accordance with paragraph 1 within 20 days after receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application of benefits of equivalent effect to the responding Party if the arbitral panel decides the responding Party does not implement the recommendations contained in the final report to

bring the inconsistent measure into conformity within the reasonable period of time established in accordance with Article 92. The complaining Party shall notify the responding Party 30 days before suspending benefits.

3. Compensation and the suspension of benefits shall be temporary measures. Neither compensation nor the suspension of benefits is preferred to full implementation of the recommendations to bring a measure into conformity with this Agreement. Compensation and suspension of benefits shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral panel's recommendation has done so, or a mutually satisfactory solution is reached.

4. In considering what benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector(s) as that affected by the measure that the arbitral panel has found to be inconsistent with the obligations derived of this Agreement ; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector(s), it may suspend benefits in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

5. Upon written request of the Party concerned, the original arbitral panel shall determine whether the level of benefits to be suspended by the complaining Party is excessive pursuant to paragraph 2. If the arbitral panel cannot be established with its original members, the proceeding set out in Article 85 shall be applied.

6. The arbitral panel shall present its determination within 60 days from the request made pursuant to paragraph 5, or if an arbitral panel cannot be established with its original members, from the date on which the last panelist is selected. The ruling of the arbitral panel shall be final and binding. It shall be delivered to the Parties and be made publicly available.

Article 94 Compliance Review

1. Without prejudice to the procedures in Article 93, if the responding Party considers that it has eliminated the non-conformity that the arbitral panel has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party has disagreement, it may refer the matter to the original arbitral panel within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of benefits.

2. The arbitral panel shall release its report within 90 days after the referral of the matter. If the arbitral panel concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of benefits.

Article 95 Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

CUSTOMS RELATED

[BLANK], SEE RULES OF ORIGIN MATRIX

CHAPTER VIII TECHNICAL BARRIERS TO TRADE

Article 68 Technical Cooperation
1. Each Party shall, on request of the other Party:

(a) provide to that Party technical advice, information and assistance on mutually agreed terms and conditions to enhance that Party's standards, technical regulation and conformity assessment procedures, and related activities, processes and systems; and

(b) provide to that Party information on its technical cooperation programs regarding standards, technical regulation and conformity assessment procedures, relating to specific areas of interest.

2. The Parties will study the possibility of strengthening the relationship and links between compulsory and voluntary certification and strengthen the bilateral communication in this regard, as a mean to facilitate market access especially considering international standards such as the ISO 9000 and 14000 series, associated to risk analyses considerations.

3. The Parties shall work towards increasing the information exchange, particularly regarding bilateral non-compliance with technical regulations and conformity assessment procedures.

ANNEX 6 MODEL OF CERTIFICATION AND VERIFICATION NETWORKING SYSTEM ON CERTIFICATE OF ORIGIN (CVNSCO)

Definitions
1. Electronic Information: exchange of electronic information of the certificate of origin, and or information regarding the supporting documents
The Parties shall implement the CVNSCO in two years after the signature of this Agreement. During the first year after the signature of this Agreement the system will be developed, and during the second year will have a testing period.

2. Process Status for the issuance of the electronic data of Certificate of Origin
Process status regarding with issuance, transmission, reception of the electronic Certificate of Origin and the *ex post* verification process.

3. Authority who receives the electronic data of Certificate of Origin In the case of China is the General Administration of Customs and in the case of Chile is the National Customs Service.

4. Authority who sends the electronic data of Certificate of Origin
In the case of China is the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). In the case of the Chile is the General Directorate for International Economic Affairs (DIRECON).

CHAPTER XIII COOPERATION

ARTICLE 111 INTELLECTUAL PROPERTY RIGHTS

1. The aim of cooperation on intellectual property rights will be:

(a) to build on the foundations established in existing international agreements in the field of intellectual property, to which both are parties, including the TRIPS Agreement and, particularly, on the principles set out in the *Declaration on the TRIPS Agreement on Public Health*, adopted on November 14, 2001, by the WTO at the Fourth WTO Ministerial held in Doha, Qatar, and the *Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, adopted on August 30, 2003;

(b) to promote economic and social development, particularly in the new digital economy, technological innovation as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and to encourage the development of social economic well-being, and trade;

CHAPTER III NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 11 Special Requirements Related to Border Measures

1. Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods[1] into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the Party of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide the competent authorities with the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

4. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, or destined for export are counterfeit or pirated.

---

[1] For the purposes of this Article:
(a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the Party of importation;
(b) **pirated copyright goods** means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the Party of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party of importation.

5. This Article shall be implemented no later than two years upon entry into force of this Agreement.

ANNEX 1 ELIMINATION OF IMPORT CUSTOMS DUTIES INTRODUCTORY NOTES

The tariff elimination schedules[2] in this Annex contains the following five columns:

(a) **"Code"**: the code used in the nomenclature of the Harmonized System 2002.
(b) **"Description"**: description of the product falling under the heading.
(c) **"Base Rate"**: the basic import customs duty rate from which the tariff elimination program starts.
(d) **"Category"**: the category under which the product concerned falls for the purposes of tariff elimination.
(e) **"Observation"**: additional information if it corresponds.

Section 1 Import Customs Duties on Imports Originating in China

The categories which are applicable to imports into Chile from China are the following:

1) **"Year 1"**: import customs duties shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force. The margin of preference is as follows:

Category	Entry into force
Year 1	100%

2) **"Year 5"**: import customs duties shall be removed in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective from January 1st of year five. Each year's margin of preference is as follows:

Category	Entry into force	01.01.07	01.01.08	01.01.09	01.01.10
Year 5	20%	40%	60%	80%	100%

3) **"Year 10"**: import customs duties shall be removed in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1st of year ten. Each year's margin of preference is as follows:

Category	Entry into force	01.01.07	01.01.08	01.01.09	01.01.10	01.01.11	01.01.12	01.01.13	01.01.14	01.01.15
Year 10	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%

4) **"EXCL"**: these products are not subject to tariff elimination.

[2] The dates established in the Schedules contained in this Annex shall be subject to the domestic legal procedures of each Party.

TRANSPARENCY
Publication of Laws and Regulations

Article 7 Anti-dumping Measures

The two sides undertake that neither side will apply anti-dumping measures to goods imported and originated from the other side.

Availability of Judicial Appeal of Agency Decisions
Annex 6 Trade and Investment Facilitation

7. Transparency in Laws and Regulations
The two sides recognize that enhanced transparency in laws and regulations is an important foundation for promoting economic and trade flow between both sides. In the spirit of serving the commercial and industrial enterprises in the two places, the two sides agree to strengthen cooperation in the area of enhanced transparency of laws and regulations.

7.1. Cooperation Mechanism
The two sides will cooperate through relevant working groups under the Joint Steering Committee as well as their respective representative agencies.

7.2. Content of Cooperation
The two sides agree to strengthen cooperation in the following areas:
7.2.1. Exchange information on the enactment and revision of laws, regulations and rules in respect of investment, trade and other economic areas.

7.2.2. Disseminate in a timely manner information on policies and regulations through various media including newspapers, journals and websites.

7.2.3. Organize and support the organization of various briefings and seminars on economic and trade policies and regulations.

7.2.4. Provide advisory services to commercial and industrial enterprises through channels such as WTO enquiry points and websites of “Invest in China” and “China Business Guide” of the Mainland.

3.2.1. Notify and publicize their respective policies and regulations on external trade and foreign investment promotion, with a view to achieving information sharing.

CUSTOMS PROCEDURES/TRADE FACILITATION

Clearance Time Benchmark Annex 3
Procedures for the Issuing and Verification
of Certificates of Origin

Pursuant to the Mainland and Hong Kong Closer Economic Partnership Arrangement (hereinafter referred to as the “CEPA”), the Mainland and the Hong Kong Special Administrative Region have concluded this Annex on the procedures for the issuing and verification of certificates of origin, and for strengthening enforcement co-operation between the two sides.

The issuing authorities of certificates of Hong Kong origin are the Hong Kong Trade and Industry Department and the "approved bodies" specified in the "Protection of Non-Government Certificates of Origin Ordinance" (Chapter 324, Laws of Hong Kong). If there is any change to the Hong Kong issuing authorities, the Customs General Administration will be informed immediately.

The content and format of the certificate of Hong Kong origin is set out in Form 1. Form 1 is an integral part of this Annex. Any change to the content and format of the certificate of origin will be agreed by both sides through consultation.

The Hong Kong Trade and Industry Department will provide specimens of the official stamps on the certificates of origin to the Customs General Administration for record purpose. If there is any change to the official stamps used on the certificates of origin, the Customs General Administration will be informed immediately.

Prior to exportation of goods of Hong Kong which are entitled to zero tariff under the "CEPA", the exporter or manufacturer will apply for a certificate of Hong Kong origin from the Hong Kong issuing authorities.

A certificate of Hong Kong origin issued by the Hong Kong issuing authorities must satisfy the following requirements:

A certificate of origin will have a unique certification reference number.

Each certificate of origin will only cover one batch of goods that enter into the Mainland at the same time. A certificate of origin may contain not more than five eight-digit tariff heading items, and all of them must be goods listed in Table 1 of Annex 1 of the "CEPA".

A certificate of origin will specify the designated single port of discharge.

The Mainland Harmonized System code for products on a certificate of origin will be completed in accordance with the eight-digit tariff code stipulated in the applicable "Customs Import and Export Tariff of the People's Republic of China".

The quantity unit on a certificate of origin will be completed by reference to the applicable quantity unit as used in the actual transaction.

Correction or double printing is not allowed on a certificate of origin; otherwise, the certificate must be re-issued.

A certificate of origin will be valid for 120 days from the date of issue.

A certificate of origin will be printed in Chinese on A4 size paper according to the format of Form 1. This language requirement will be implemented not later than 1 July 2004.

In the event of theft, loss or damage of a certificate of origin, the exporter or manufacturer may make a written request to the Hong Kong issuing authorities for the issue of a duplicate certificate. The exporter or manufacturer will ensure that the original copy has not been used. The duplicate certificate will bear the words "certified true copy". If the original certificate has been used, the duplicate certificate will be invalid. If the duplicate certificate has been used, the original certificate will be invalid.

The two sides will administer the origin declarations of Hong Kong goods which are entitled to zero tariff under the "CEPA" through interconnection, and will transmit the following information by means of electronic data interchange through a dedicated line to the Customs General Administration:

From 1 January 2004, the Hong Kong Trade and Industry Department will, within ten days after the end of each quarter, transmit to the Customs General Administration production data and information on certificates of origin issued for Hong Kong goods benefiting from zero tariff in the previous quarter;

After the issue of a certificate of origin by the Hong Kong issuing authorities, the Hong Kong Trade and Industry Department will immediately transmit basic information on the certificate of origin, including the certificate number, name of exporter, factory registration number, port of discharge, Mainland Harmonised System code of the product, product name, quantity unit and quantity, amount and currency, and the name of the Hong Kong issuing authority, etc., to the Customs General Administration through a designated line;

The customs administration at the port of clearance will verify the certificate of origin submitted by the importer against the electronic data transmitted by the Hong Kong Trade and Industry Department. If the information is verified to be in order, the verification and endorsement process should be completed within 7 days and the Hong Kong Trade and Industry Department should be informed of the completion;

Other information which is considered necessary by the two sides.

In making an import declaration, the importer should take the initiative to inform the customs administration at the port of clearance that the goods are eligible for zero tariff and submit a valid certificate of origin. If the information is verified to be in order through interconnection by the customs administration at the port of clearance, the imported goods will be granted zero tariff treatment. In the event that the information cannot be verified through interconnection, the customs administration at the port of clearance may, at the request of the importer, act in accordance with the stipulated import procedures and release the goods. However, a deposit of an amount equal to the tariff charged at the applicable "non-CEPA" import tariff rate will be collected for the goods concerned. The customs administration at the port of clearance will verify the details on the certificate of origin within 90 days following the release of the goods and, in accordance with the verification results, proceed with the procedure to either return the deposit or convert the deposit to import tariff.

If the customs administration at the port of clearance has doubts about the authenticity of the content of a certificate of origin, it may, through the Customs General Administration or its authorised customs unit, seek assistance from the Hong Kong Customs and Excise Department for verification. The Hong Kong Customs and Excise Department will respond within 90 days after receiving such requests. If the Hong Kong Customs and Excise Department cannot complete the verification and confirm the status of the certificate of origin of the goods concerned within 90 days, the Customs General Administration may notify the customs administration at the port of clearance to act in accordance with the stipulated import procedures and release the goods. However, a deposit of an amount equal to the tariff charged at the applicable "non-CEPA" import tariff rate will be collected for the goods. After verification by the Hong Kong Customs and Excise Department, the customs administration at the port of clearance will, in accordance with the verification results, immediately proceed with the procedure to either return the deposit or convert the deposit to import tariff.

The two sides may incorporate the administrative assistance required for the purpose of implementing the rules of origin in Annex 2 of the "CEPA" and this Annex in the "Customs Co-operative Arrangement" concluded between the Customs General Administration and the Hong Kong Customs and Excise Department. The two sides may exchange relevant information, including information about the origin of the goods imported from Hong Kong to the Mainland, the authenticity of the contents in a certificate of origin, whether the Hong Kong goods enjoying zero tariff comply with the rules of origin, and other information which may facilitate the monitoring of the proper implementation of this Annex. If need be, the staff of one side may conduct visits to the other side for the purpose of understanding the relevant situation subject to the agreement of both sides.

The customs administrations of the two sides will notify each other and take action according to applicable laws if the investigation by one side confirms that goods subject to zero tariff do not comply with the requirements set out in Table 1 of Annex 2 of the "CEPA" and this Annex.

Both sides will maintain the confidentiality of information in respect of information exchanged for the purpose of verifying the origin of goods imported. In the absence of consent from the applicant of the certificate of origin, no such information will be disclosed or used for other purposes, unless it is required by judicial proceedings.

This Annex will come into effect on the day of signature by the representatives of the two sides.

Signed in duplicate in Hong Kong, this 29th day of September 2003 in the Chinese language.

ANNEX 6
TRADE AND INVESTMENT FACILITATION

1. Pursuant to the Mainland and Hong Kong Closer Economic Partnership Arrangement (hereinafter referred to as the "CEPA"), the Mainland and the Hong Kong Special Administrative Region have concluded this Annex on cooperation in trade and investment facilitation.

2. The two sides agree to cooperate in trade and investment facilitation in seven areas, namely, trade and investment promotion; customs clearance facilitation; commodity inspection and quarantine, food safety, quality and standardization; electronic business; transparency in laws and regulations; cooperation of small and medium enterprises, and cooperation in Chinese traditional medicine and medical products sector. Cooperation in these areas will follow the guidance and coordination of the Joint Steering Committee set up in accordance with Article 19 of the "CEPA".

3. Trade and Investment Promotion
The two sides recognize the importance of mutual trade and investment to their economic and social development. Taking into account the actual development of trade and investment as well as the need for growth, the two sides agree to strengthen cooperation in trade and investment promotion.

3.1.Cooperation Mechanism
Relevant working groups under the Joint Steering Committee will be made full use of in guiding and coordinating cooperation in trade and investment promotion between the two sides.

3.2. Content of Cooperation
Based on past cooperation experience, as well as the development of economic and trade exchanges between both sides, the two sides will strengthen cooperation in the following areas:

3.2.1. Notify and publicize their respective policies and regulations on external trade and foreign investment promotion, with a view to achieving information sharing.

3.2.2. Exchange views and conduct consultations to solve common problems relating to trade and investment of both sides.

3.2.3. Strengthen communication and cooperation in mutual investment and joint promotion of overseas investment.

3.2.4. Strengthen cooperation in organizing exhibitions and arranging delegations to participate in overseas exhibitions.

3.2.5. Conduct exchanges on other issues of mutual concern relating to trade and investment promotion.

3.3. Participation of Other Entities
The two sides note that the participation of semi-official and non-official organizations in the area of trade and investment promotion has positive effect and significance. The two sides agree to support and assist these organizations in various ways to launch trade and investment promotion activities.

4. Customs Clearance Facilitation
Recognizing the importance of close and long-term cooperation between the two Customs Administrations and of the implementation of customs clearance facilitation to their economic and social development, the two sides agree to strengthen cooperation in customs clearance facilitation.

4.1.Cooperation Mechanism
The two sides will steer and coordinate cooperation in customs clearance facilitation through the Annual Review Meeting between the senior leaders of the General Administration of Customs and the Customs and Excise Department of Hong Kong, and will promote the launch of cooperation in customs clearance facilitation through expert groups of the Customs Administrations and relevant departments of the two sides.

4.2. Content of Cooperation
Taking into account the need for different customs clearance systems and monitoring modes as well as experience in cooperation, the two sides agree to strengthen cooperation in the following areas:

4.2.1. Establish a reciprocal notification system to report their respective policies and regulations on customs clearance and management of clearance facilitation.

4.2.2. Conduct studies and exchanges on the differences between their respective customs clearance systems and on existing problems, with a view to enriching the specific content of cooperation in customs clearance facilitation.

4.2.3. Explore the expansion of the scope for further cooperation in strengthening control and enhancing efficiency in respect of customs clearance in areas such as sea and land transportation, intermodal operation and logistics.

4.2.4. Strengthen cooperation in establishing a crisis management mechanism at control points and adopt effective measures to maintain as far as possible smooth clearance on the two sides.

4.2.5. Establish a regular liaison mechanism, to make full use of the Guangdong and Hong Kong Customs Working Group on Operational Efficiency of Control Points set up under the Guangdong Branch of the General Administration of Customs and the Customs and Excise Department of Hong Kong.

4.2.6. Strengthen the work of the Expert Group on Cargo Data Sharing and Road Cargo Clearance set up under the two Customs Administrations, study the feasibility of data interchange and development of electronic customs clearance system at control points, strengthen the risk management of customs clearance and enhance its efficiency with technical solutions.

5. Commodity Inspection and Quarantine, Food Safety and Quality and Standardization
Recognizing the importance of protecting the health and safety of Mainland and Hong Kong people in the course of trade in goods and movement of persons, the two sides agree to strengthen cooperation in the areas of commodity inspection and quarantine, food safety, health and quarantine of people, and certification, accreditation and standardization.

5.1. Cooperation Mechanism
The two sides will make use of the existing cooperation channels of relevant departments to promote the launch of cooperation in the relevant areas through reciprocal visits, discussions and other modes of communication.

5.2. Content of Cooperation
The two sides agree to strengthen cooperation in the following areas:

5.2.1. Inspection and supervision of electrical and mechanical products
To ensure the safety of consumers of both sides, the two sides will enhance information flow and exchanges through established communication channels, in particular the exchange of information and intelligence on the safety of electrical and mechanical products, so as to jointly prevent safety problems associated with these products. The two sides will also promote cooperation in the training of inspection and supervisory officers.
The two sides are committed to implementing the "Cooperation Arrangement on Electrical and Mechanical Products Safety" signed between the State General Administration for Quality Supervision and Inspection and Quarantine, and the Electrical and Mechanical Services Department of Hong Kong on 12 February 2003.

5.2.2. Inspection and quarantine of animals and plants, and food safety
The two sides will make use of the existing coordination mechanism to step up cooperation in inspection and quarantine of animals and plants as well as in food safety, so as to enable both sides to enforce their respective regulations more effectively.

Monitoring of health and quarantine issues
The two sides will make use of the existing channels to regularly notify each other of the information on epidemic outbreaks and to step up academic exchange and joint research on health and quarantine issues; discuss health monitoring issues in respect of small vessels plying between the control points of Guangdong and Shenzhen; enhance cooperation in areas such as investigation and prevention of tropical infectious diseases and live vectors, surveillance and control of special articles and radioactive articles, transportation of biological disease factors and the related inspection, treatment and control measures.

5.2.4. Certification, accreditation and standardization management
The two sides will urge their respective organizations to strengthen cooperation with a view to promoting conformity assessment (including testing, certification and inspection), accreditation and standardization management.

6. Electronic Business
The two sides recognize that the application and promotion of electronic business will create more trade and investment opportunities for both sides. They agree to step up exchange and cooperation in the area of electronic business.

6.1. Cooperation Mechanism
Under the guidance and coordination of the Joint Steering Committee, the two sides will set up a working group to act as a communication channel as well as a consultation and coordination mechanism for cooperation in electronic business, with a view to promoting cooperation and joint development in the area of electronic business.

Content of Cooperation
The two sides agree to cooperate in the following areas:

6.2.1. Cooperate in specialized projects in respect of the study and formulation of rules, standards and regulations of electronic business, with a view to creating a favourable environment for promoting and ensuring the healthy development of electronic business.

6.2.2. Strengthen exchange and cooperation in areas such as corporate application, promotion and training. Make full use of the relevant government departments of the two sides in promotion and coordination, step up promotion for electronic business, foster interaction between the enterprises of the two sides, and facilitate the launching of electronic business among the enterprises through demonstration projects.

6.2.3. Strengthen cooperation in implementing e-government, intensify exchange and cooperation in the development of e-government at various levels.

6.2.4. Cooperate in economic and trade information exchange, and expand the scope and extent of cooperation.

7. Transparency in Laws and Regulations

The two sides recognize that enhanced transparency in laws and regulations is an important foundation for promoting economic and trade flow between both sides. In the spirit of serving the commercial and industrial enterprises in the two places, the two sides agree to strengthen cooperation in the area of enhanced transparency of laws and regulations.

7.1. Cooperation Mechanism

The two sides will cooperate through relevant working groups under the Joint Steering Committee as well as their respective representative agencies.

7.2. Content of Cooperation

The two sides agree to strengthen cooperation in the following areas:

7.2.1. Exchange information on the enactment and revision of laws, regulations and rules in respect of investment, trade and other economic areas.

7.2.2. Disseminate in a timely manner information on policies and regulations through various media including newspapers, journals and websites.

7.2.3. Organize and support the organization of various briefings and seminars on economic and trade policies and regulations.

7.2.4. Provide advisory services to commercial and industrial enterprises through channels such as WTO enquiry points and websites of “Invest in China” and “China Business Guide” of the Mainland.

8. Cooperation of Small and Medium Enterprises

The two sides recognize that the development of small and medium enterprises plays an important role in increasing employment, promoting economic development and maintaining social stability. The two sides agree to promote exchanges and cooperation between small and medium enterprises of the two places.

8.1. Cooperation Mechanism

Establish an operational mechanism between relevant government departments of both sides to promote cooperation between small and medium enterprises of the two sides, with a view to fostering their cooperation and seeking mutual development.

8.2. Content of Cooperation

The two sides agree to support and promote cooperation in the following areas:

8.2.1. Explore jointly the strategy and support policy for the development of small and medium enterprises through visits and exchanges.

8.2.2. Organize visits and exchanges on the organizational and operational modes of the intermediaries providing services to small and medium enterprises in the two places, and promote cooperation of the intermediaries.

8.2.3. Establish channels for providing information services to small and medium enterprises in the two places, exchange regularly relevant publications, set up dedicated websites, implement progressively information interchange and the interconnection of information website databases of the two sides.

8.2.4. Organize through different modes direct exchanges and communication between small and medium enterprises of the two places to promote their cooperation.

8.3. Participation of Other Entities
The two sides support and assist semi-official and non-official organizations to play a part in promoting cooperation between small and medium enterprises of the two places.

9. Cooperation in Chinese Traditional Medicine and Medical Products Sector
The two sides recognize that traditional Chinese medicine and medical products, being a fine component of the Chinese culture, bears tremendous market application potential and economic benefits. Both sides have their own competitive edge in areas such as promoting the industrialization of traditional Chinese medicine and medical products and advancing its modernization and internationalization. Cooperation in this area will be of notable significance to economic and social development of both sides. The two sides agree to strengthen cooperation in the development of the traditional Chinese medicine and medical products sector.

9.1. Cooperation Mechanism
The two sides will strengthen and improve the mechanism of liaison and cooperation between their respective government departments so as to promote the development of cooperation in traditional Chinese medicine and medical products sector of the two places.

9.2. Content of Cooperation
Based on the situation and development trend of cooperation in traditional Chinese medicine and medical products sector in the two places, the two sides agree to strengthen cooperation in the following areas：

9.2.1. Communicate on the formulation of their respective regulations on and management of traditional Chinese medicine and medical products with a view to achieving information sharing.

9.2.2. Enhance cooperation in research on traditional Chinese medicine and medical products, exchange and share information on areas such as industry development strategy and development orientation of traditional Chinese medicine and medical products.

9.2.3. Strengthen communication and coordination in registration management of traditional Chinese medical products, implement standardization in the management of traditional Chinese medical products, and facilitate mutual trade in traditional Chinese medical products.

9.2.4. Cooperate in such areas as facility management and regulations and requirements for clinical trials, with a view to achieving mutual recognition of clinical data.

9.2.5. Conduct exchanges and cooperate in quality standardization for traditional Chinese medical products, and jointly promote the enhancement of quality standards for traditional Chinese medical products.

9.2.6. Support cooperation between the traditional Chinese medicine and medical products enterprises of the two places and jointly strive for international market expansion.

9.2.7. Strengthen trade and investment promotion and cooperation in the traditional Chinese medicine and medical products sector.

9.2.8. Conduct exchanges and consultations on ways to solve problems arising from cooperation in traditional Chinese medicine and medical products sector.

9.3. Participation of Other Entities
The two sides will support and assist the participation of semi-official and non-official organizations in cooperation in the traditional Chinese medicine and medical products sector, including the cooperation already established between the National Center for Traditional Chinese Medicine and the Hong Kong Jockey Club Institute of Chinese Medicine Ltd.

10. According to paragraphs 3 and 4 of Article 17 of the "CEPA", any new area or content of trade and investment facilitation agreed by the two sides will be incorporated into this Annex.

11. This Annex will come into effect on the day of signature by the representatives of the two sides.

ELECTRONIC DATA INTERCHANGE REQUIREMENT

6. Electronic Business
The two sides recognize that the application and promotion of electronic business will create more trade and investment opportunities for both sides. They agree to step up exchange and cooperation in the area of electronic business.

6.1. Cooperation Mechanism
Under the guidance and coordination of the Joint Steering Committee, the two sides will set up a working group to act as a communication channel as well as a consultation and coordination mechanism for cooperation in electronic business, with a view to promoting cooperation and joint development in the area of electronic business.

Content of Cooperation
The two sides agree to cooperate in the following areas:

6.2.1. Cooperate in specialized projects in respect of the study and formulation of rules, standards and regulations of electronic business, with a view to creating a favourable environment for promoting and ensuring the healthy development of electronic business.

6.2.2. Strengthen exchange and cooperation in areas such as corporate application, promotion and training. Make full use of the relevant government departments of the two sides in promotion and coordination, step up promotion for electronic business, foster interaction between the enterprises of the two sides, and facilitate the launching of electronic business among the enterprises through demonstration projects.

6.2.3. Strengthen cooperation in implementing e-government, intensify exchange and cooperation in the development of e-government at various levels.

6.2.4. Cooperate in economic and trade information exchange, and expand the scope and extent of cooperation.

SANITARY AND PHYTOSANITARY MEASURES

Annex 6 Trade and Investment Facilitation
5.2.2. Inspection and quarantine of animals and plants, and food safety
The two sides will make use of the existing coordination mechanism to step up cooperation in inspection and quarantine of animals and plants as well as in food safety, so as to enable both sides to enforce their respective regulations more effectively.

Hazards and Safety Requirements
Annex 6 Trade and Investment Facilitation
5.2.3 Monitoring of health and quarantine issues
The two sides will make use of the existing channels to regularly notify each other of the information on epidemic outbreaks and to step up academic exchange and joint research on health and quarantine issues; discuss health monitoring issues in respect of small vessels plying between the control points of Guangdong and Shenzhen; enhance cooperation in areas such as investigation and prevention of tropical infectious diseases and live vectors, surveillance and control of special articles and radioactive articles, transportation of biological disease factors and the related inspection, treatment and control measures.

Article 13 Financial Cooperation
The two sides shall adopt the following measures to further strengthen cooperation in the areas of banking, securities and insurance :

1. The Mainland supports wholly state-owned commercial banks and certain joint-equity commercial banks in re-locating their international treasury and foreign exchange trading centres to Hong Kong.

2. The Mainland supports its banks in developing network and business activities in Hong Kong through acquisition.

3 The Mainland supports the full utilization of financial intermediaries in Hong Kong during the process of reform, restructuring and development of the financial sector in the Mainland.

4. The two sides shall strengthen cooperation and information sharing between their financial regulators.

5. The Mainland shall, in line with the principles of observing market rules and enhancing regulatory efficiency, support eligible Mainland insurance companies and other companies, including private enterprises, in listing in Hong Kong.

EXPRESS DELIVERY SERVICES

Annex 4 Specific Commitments on Liberalization of Trade in Services
1. Pursuant to the Mainland and Hong Kong Closer Economic Partnership Arrangement (hereinafter referred to as the "CEPA"), the Mainland and Hong Kong Special Administrative Region have concluded this Annex on the specific commitments on liberalization of trade in services.

2. As from 1 January 2004, the Mainland will apply to services and service suppliers of Hong Kong the specific commitments set out in Table 1 of this Annex. Table 1 forms an integral part of this Annex. The commitments on value-added telecommunications services will apply as from 1 October 2003.

3. In respect of the service sectors, sub-sectors or relevant measures not covered by this Annex, the Mainland will apply Annex 9 of the "Schedule of Specific Commitments on Services List of Article II MFN Exemptions" of the "Protocol on the Accession of the People's Republic of China".

4. In respect of the implementation of the specific commitments set out in Table 1 of this Annex, apart from applying the provisions of this Annex, the relevant laws and regulations, and administrative regulations of the Mainland should also be applicable.

5. As from 1 January 2004, Hong Kong will not impose any new discriminatory measures on Mainland's services and service suppliers in the areas of services covered in Table 1 of this Annex.

6. The two sides will, through consultations, formulate and implement further liberalization of Hong Kong's service sectors for the Mainland. The relevant specific commitments will be listed in Table 2. Table 2 forms an integral part of this Annex.

7. The two sides will, through consultations, formulate and implement specific commitments of Hong Kong in relation to Mainland people obtaining professional qualifications of Hong Kong.

8. In the event that the implementation of this Annex causes substantial impact on the trade and relevant sectors of either side, the two sides will conduct consultations on the relevant provisions of this Annex at the request of either side.

9. This Annex will come into effect on the day of signature by the representatives of the two sides.

TRANSPARENCY

Chapter 16 Article 160 Transparency

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, respecting any matter covered by this Agreement.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1 above.

3. Nothing in this Article shall prejudice as to whether a measure adopted by a Party is consistent with this Agreement.

Article 161 Public Comment Procedures

The Government of each Party shall, in accordance with the domestic laws and regulations of the Party, endeavor to maintain public comment procedures, except in cases of emergency, inter alia, a real or imminent danger to the health, safety, or welfare of persons, to the preservation of the environment or to the conservation of exhaustible natural resources, in order to:

(a) make public in advance regulations of general application that affect any matter covered by this Agreement, accompanied by an explanation of their rationale and potential effects, when the Government adopts, amends or repeals them;

(b) provide a reasonable opportunity for comments by the public and give consideration to those comments before the adoption of such regulations; and

(c) make public those comments. Where appropriate, Those comments should be compiled and accompanied by the views of the Government on them.

Article 162 Administrative Proceedings

1. Where measures are to be adopted which pertain to or affect the implementation and operation of this Agreement, the competent authorities of a Party shall, in accordance with the domestic laws and regulations of the Party:

(a) inform the applicant of the decision concerning the application within a reasonable period of time after the submission of an application considered complete under the domestic laws and regulations of the Party; and

(b) provide, without undue delay, information concerning the status of the application, at the request of the applicant.

2. Where measures are to be adopted by the competent authorities of a Party which pertain to or affect the implementation and operation of this Agreement and which impose obligations on or restrict rights of a person, such competent authorities shall, prior to any final decision, when time, the nature of the measures and public interest permit and in accordance with the domestic laws and regulations of the Party, provide that person with:

(a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and

(b) a reasonable opportunity to present facts and arguments in support of the position of such person.

Article 163 Review and Appeal
1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of prompt review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic laws and regulations, that such decisions are implemented by the competent authorities of the Party with respect to the administrative action at issue.

DISPUTE SETTLEMENT

Article 150 Scope and Coverage
Except as otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement.

Article 151 Choice of Dispute Settlement Procedure
1. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.

2. Notwithstanding paragraph 1 above, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

3. For the purposes of paragraph 2 above, a dispute settlement procedure under this Chapter shall be deemed to be initiated by a Party's request for the establishment of an arbitral tribunal pursuant to paragraph 1 of Article 153.

4. For the purposes of paragraph 2 above, a dispute settlement procedure under the WTO Agreement shall be deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement, as may be amended.

Article 152 Consultations
1. Each Party may request in writing consultations with the other Party regarding any matter on the interpretation or application of this Agreement.

2. When a Party requests consultations pursuant to paragraph 1 above, the other Party shall reply to the request and enter into consultations in good faith within 30 days after the date of receipt of the request, with a view to a prompt and satisfactory resolution of the matter. In a case of consultations regarding perishable goods, the requested Party shall enter into consultations within 15 days after the date of receipt of the request.

Article 153 Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 152 above may request in writing the establishment of an arbitral tribunal to the Party complained against:

(a) if the Party complained against does not enter into such consultations within 30 days after the date of its receipt of the request for consultations under that Article; or

(b) if the Parties fail to resolve the dispute through such consultations under that Article within 60 days after the date of receipt of the request for such consultations, provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations, or as a result of the application by the Party complained against of measures which are in conflict with the obligations of that Party, under this Agreement.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall identify:

(a) the legal basis of the complaint, including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and

(b) the factual basis for the complaint.

3. The arbitral tribunal shall comprise 3 arbitrators.

4. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to 3 candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party.

5. The Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 4 above.

6. If a Party has not appointed one arbitrator pursuant to paragraph 4 above or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 5 above, such arbitrator or such third arbitrator shall be chosen by lot within further 7 days from the candidates proposed pursuant to paragraph 4 above.

7. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

8. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of such arbitral tribunal shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to this Article, to rule on the consistency of the measures at issue with this Agreement, and, where the arbitral tribunal reaches the conclusion that the measure is inconsistent with this Agreement, to make recommendations that the Party complained against bring the measure into conformity with this Agreement. When making recommendations, the arbitral tribunal may not suggest specific ways in which the Party complained against could implement the recommendations.”

9. The Parties shall promptly deliver the terms of reference pursuant to paragraph 8 above to the arbitral tribunal.

10. If an arbitrator dies, withdraws or is removed, a replacement shall be appointed within 30 days in accordance with the appointment procedure provided for in paragraphs 4 to 6 above, which shall be applied, respectively, mutatis mutandis. In such a case, any time period applicable to the arbitral tribunal proceeding shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is appointed.

Article 154 Award of Arbitral Tribunals
1. The arbitral tribunal shall meet in closed session.

2. The deliberations of the arbitral tribunal, the documents submitted to it and the draft award referred to in paragraph 4 below shall be kept confidential.

3. Nothing in this Chapter shall preclude a Party from disclosing statements of its own position to the public. Each Party shall treat as confidential, information submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. A Party shall also, upon request of the other Party, provide a nonconfidential summary of the information contained in its written submissions that could be disclosed to the public.

4. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Parties its draft award, including both descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit to the Parties its draft award within the aforementioned 90 day period, it may extend that period with the consent of the Parties. However, in no case should the period from the establishment of the arbitral tribunal to the submission of the draft award to the Parties exceed 150 days. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of the submission of the draft award.

5. The arbitral tribunal shall issue its award within 30 days after the date of the submission of the draft award.

6. In the case that the matters referred to the arbitral tribunal are those concerning perishable goods, the arbitral tribunal shall make every effort to issue its award to the Parties within 90 days after the date of its establishment. In no case should it do so later than 120 days.

7. The arbitral tribunal shall take its decisions including its award by majority vote.

8. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 155 Termination of Proceedings of the Arbitral Tribunal
While the proceedings of the arbitral tribunal are in progress, the Parties may agree to terminate the proceedings at any time by jointly so notifying the chair of the arbitral tribunal.

Article 156 Implementation of Award
1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 154.

2. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the period of time for implementing the award. If the complaining Party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal.

3. If the Party complained against fails to comply with the award within the implementation period as determined pursuant to paragraph 2 above, the Party complained against shall no later than the expiry of that implementation period enter into consultations with the complaining Party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of that implementation period, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

4. If the complaining Party considers that measures taken by the Party complained against for implementing the award do not comply with the award within the implementation period as determined pursuant to paragraph 2 above, it may refer the matter to an arbitral tribunal.

5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 above confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2 above, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

6. Suspension of the application of concessions or other obligations under paragraphs 3 and 5 above may only be implemented at least 30 days after the date of the notification in accordance with those paragraphs. Such suspension shall:

(a) not be effected if, in respect of the dispute to which the suspension relates, consultations, or proceedings before an arbitral tribunal are in progress;

(b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected;

(c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the award; and

(d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

7. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 5 or 6 above have not been met, it may refer the matter to an arbitral tribunal.

8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have as its arbitrators, the arbitrators to the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 4 to 6 of Article 153. Unless the Parties agree to a different period, such arbitral tribunal shall issue its award within 30 days after the date when the matter is referred to it. The award of the arbitral tribunal established under this Article shall be binding on the Parties.

Article 157 Modification of Time Periods
Any time period provided for in this Chapter may be modified by mutual consent of the Parties.

Article 158 Expenses
Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares.

Article 159 Rules of Procedure
Unless the Parties agree otherwise, the details and procedures for the arbitral tribunal provided for in this Chapter shall be in accordance with the Rules of Procedure to be adopted by the Joint Committee within the first year of the date of entry into force of this Agreement.

ARTICLE 50 CUSTOMS COOPERATION FOR TRADE FACILITATION

For prompt customs clearance of goods traded between the Parties, each Party, recognizing the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation, shall make cooperative efforts to:

(a) make use of information and communications technology;

(b) simplify its customs procedures; and

(c) make its customs procedures conform, as far as possible, to relevant international standards and recommended practices such as those made under the auspices of the Customs Cooperation Council.

ARTICLE 17 COOPERATION IN THE FIELD OF TECHNICAL REGULATIONS, STANDARDS AND CONFORMITY ASSESSMENT PROCEDURES

1. The Parties shall develop cooperation between the Governments of the Parties in the field of technical regulations, standards and conformity assessment procedures (hereinafter referred to in this Article as “the Cooperation”) with a view to facilitating trade in goods between them.

2. The forms of the Cooperation may include the following:

(a) conducting joint studies and holding seminars and symposia, in order to enhance mutual understanding of their domestic technical regulations, standards and conformity assessment procedures;

(b) exchanging government officials for training purpose;

(c) contributing jointly to activities related to technical regulations, standards and conformity assessment procedures in international and regional fora; and

(d) encouraging entities related to technical regulations, standards and conformity assessment procedures other than the Governments of the Parties to participate in the Cooperation and to implement cooperation between such entities.

3. The implementation of this Article shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

SANITARY AND PHYTOSANITARY MEASURES

Article 12 Reaffirmation of Rights and Obligations
The Parties reaffirm their rights and obligations relating to sanitary and phytosanitary (hereinafter referred to in this Chapter as "SPS") measures under the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement, as may be amended.

Article 13 Enquiry Points
Each Party shall designate an enquiry point which is able to answer all reasonable enquiries from the other Party regarding SPS measures referred to in Article 12 and, if appropriate, to provide their relevant information.

Article 14 Sub-Committee on SPS Measures
1. For the purposes of the effective implementation and operation of this Section, a Sub-Committee on SPS Measures (hereinafter referred to in this Article as "the Sub- Committee") shall be established pursuant to Article 165.

2. The Sub-Committee shall meet at such venue and times as may be agreed by the Parties.

3. The functions of the Sub-Committee shall be:

(a) exchange of information on such matters as occurrences of SPS incidents in the Parties and non-Parties, and change or introduction of SPS related regulations and standards of the Parties, which may, directly or indirectly, affect trade in goods between the Parties;

(b) notification to either Party of information on potential SPS risks recognized by the other Party;

(c) science-based consultation to identify and address specific issues that may arise from the application of SPS measures with the objective of obtaining mutually acceptable solutions;

(d) discussing technical cooperation in relation to SPS measures;

(e) consulting cooperative efforts between the Parties in international fora in relation to SPS measures;

(f) reporting the findings of the Sub-Committee to the Joint Committee; and

(g) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.

4. The Sub-Committee may, if necessary, establish ad hoc technical advisory groups as its subsidiary bodies. The groups shall provide the Sub-Committee with technical information and advice at the request of the Sub-Committee.

Article 15 Non-Application of Chapter 15
The dispute settlement procedure provided for in Chapter 15 shall not apply to this Section.

CHAPTER 7, ARTICLE 73, INTELLECTUAL PROPERTY RIGHTS
1. Nothing in this Chapter shall be construed so as to derogate from the rights and obligations under multilateral agreements in respect of protection of intellectual property rights to which the Parties are parties.

2. Nothing in this Chapter shall be construed so as to oblige either Party to extend to investors of the other Party and their investments treatment accorded to investors

of a non-Party and their investments by virtue of multilateral agreements in respect of protection of intellectual property rights, to which the former Party is a party.

CHAPTER 3, ARTICLE 5, ELIMINATION OF CUSTOMS DUTIES

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its Customs Duties on originating goods designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out therein.

2. Except as otherwise provided for in this Agreement, neither Party shall increase any Customs Duty on originating goods from the level provided for in its Schedule in Annex 1.

Note: The term “level” means the level of Customs Duty that shall be implemented by each Party in accordance with its Schedule and does not mean the Base Rate specified in such Schedule.

3. (a) On the request of either Party, the Parties shall consult to consider:

(i) issues such as improving market access conditions on originating goods designated for consultation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule; or

(ii) further steps in the process of liberalization of trade between the Parties in respect of goods after 4 years of the date of entry into force of this Agreement.

(b) Subparagraph (a)(ii) above shall not apply to the originating goods referred to in subparagraph (a)(i) above while the consultation on the originating goods is held under the terms and conditions referred to in subparagraph (a)(i) above.

4. The Parties shall consult to consider further steps in the process of liberalization of trade between the Parties in respect of originating goods set out in the Schedule in Annex 1, in light of the result of the multilateral trade negotiations under the World Trade Organization (WTO).

5. Any amendment to the Schedules as a result of the consultations referred to in paragraph 3 or 4 above shall be approved by both Parties in accordance with their respective legal procedures, and shall supersede any corresponding concession provided for in their respective Schedules.

CHAPTER 9, FINANCIAL SERVICES
Article 107 Scope and Coverage
1. This Chapter shall apply to measures adopted or maintained by a Party affecting:

(a) cross-border trade in financial services;
(b) financial institutions of the other Party; and
(c) investors of the other Party, and investments of such investors, in financial institutions in the Party.

2. This Chapter shall not apply to measures pursuant to immigration laws and regulations.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its Area:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

Article 108 Commitments under International Agreements

The Parties shall be bound by the terms and conditions that each Party is committed to under the Organisation for Economic Cooperation and Development Code of Liberalisation of Capital Movements, as may be amended, and the GATS, including the Understanding on Commitments in Financial Services, and under other international agreements to which both Parties are parties.

Note: Nothing in this Chapter shall be construed to affect the terms and conditions committed to by either Party under the respective agreements referred to in this Article.

Article 109 Non-Application of Chapter 15
The dispute settlement procedure provided for in Chapter 15 shall not apply to this Chapter.

Article 110 Exceptions
Notwithstanding the provisions of this Chapter, Chapter 7 and Chapter 8, a Party shall not be prevented from adopting or maintaining measures for prudential reasons with respect to financial services, including for the protection of investors, depositors, policy holders, policy claimants or persons to whom a fiduciary duty is owed by a financial institution or a cross-border financial service supplier, or to ensure the soundness, integrity and stability of a Party's financial system.

Article 111 Relation to Other Chapters
The provisions of Chapters 7 and 8 shall not apply to measures referred to in paragraph 1 of Article 107.

Article 112 Definitions
For the purposes of this Chapter:

(a) the term "cross-border financial service supplier" means a person of a Party that is engaged in the business of supplying financeial services within the Area of the Party and that seeks to supply or supplies financial services through the cross-border supply of such services;

(b) the term "cross-border trade in financial services" means the supply of a financial service:

(i) from the Area of a Party into the Area of the other Party;

(ii) in the Area of a Party by a person of that Party to a person of the other Party; or

(iii) by a national of a Party in the Area of the other Party; but does not include the supply of a service by an investment of an investor of a Party, in the Area of that other Party;

(c) the term "financial institution" means any enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in which it is located;

(d) the term "financial institution of the other Party" means a financial institution located in a Party that is owned or controlled by persons of the other Party;

(e) the term “financial service” means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

(f) the term “investment” means "investment" as defined in Article 96, except that, with respect to “loan” and “debt security” referred to in that Article:

(i) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in which the financial institution is located; and

(ii) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (i) above, is not an investment; for greater certainty,

(iii) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and

(iv) a loan granted by or debt security owned by a cross-border financial service supplier, other than a loan to or debt security issued by a financial institution referred to in subparagraph (i) above, is an investment under Chapter 7 if such loan or debt security meets the criteria for investments set out in Article 96;

(g) the term “investor of a Party” means a Party or state enterprise thereof, or a person of that Party, that seeks to make, makes, or has made an investment; and

(h) the term “public entity” means a central bank or a monetary authority of a Party, or any financial institution owned or controlled by a Party.

MARKET ACCESS FOR TRADE IN SERVICES
MOVEMENT IN LABOR

Chapter 10 Entry and Temporary Stay of Nationals for Business Purposes
Article 113 General Principles
1. This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating entry and temporary stay on a reciprocal basis and of establishing transparent criteria and procedures for entry and temporary stay, and the need to ensure border security and to protect the domestic labor force and permanent employment in either Party.

2. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with paragraph 1 above, and in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article 114 Scope and Coverage
1. This Chapter shall apply to measures affecting the entry and temporary stay of nationals of a Party who enter into the other Party for business purposes.

2. This Chapter shall not apply to measures affecting nationals seeking access to the employment market of the Parties, nor shall it apply to measures regarding nationality or citizenship, or residence or employment on a permanent basis.

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of nationals of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of the categories in Annex 10.

Note: The sole fact of requiring a visa for natural persons of a certain nationality and not for those of others shall not be regarded as nullifying or impairing benefits under a specific category.

Article 115 Grant of Entry and Temporary Stay
1. Each Party shall grant entry and temporary stay to nationals of the other Party in accordance with this Chapter including the terms of the categories in Annex 10.

2. Each Party shall ensure that fees charged by its competent authorities for processing applications for entry and temporary stay of nationals of the other Party for business purposes have regard to the administrative costs involved.

Article 116 Provision of Information
1. Further to Article 160, each Party shall:

(a) provide to the other Party such materials as will enable that other Party to become acquainted with its measures relating to this Chapter; and

(b) prepare, publish and make publicly available in the Parties, explanatory material in a consolidated document regarding the requirements for entry and temporary stay under this Chapter, no later than one year after the date of entry into force of this Agreement.

2. From the entry into force of this Agreement, each Party shall, to the extent possible, collect, maintain and make available to the other Party, data respecting the granting of entry and temporary stay under this Chapter to nationals of the other Party.

Article 117 Sub-Committee on Entry and Temporary Stay
1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Entry and Temporary Stay (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 165.

2. The functions of the Sub-Committee shall be:

(a) reviewing the implementation and operation of this Chapter;

(b) considering the development of measures to further facilitate entry and temporary stay of nationals on a reciprocal basis;

(c) enhancing mutual understanding between the Parties on credentials and other qualifications relevant to entry and temporary stay of nationals under this Chapter;

(d) reporting the findings of the Sub-Committee and making recommendations to the Joint Committee; and

(e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165. Such functions may include reporting to the Joint Committee on options for possible modifications or additions to this Chapter.

Article 118 Dispute Settlement

1. Notwithstanding the provisions of Article 152, a Party may not request consultations with the other Party regarding refusal to grant entry and temporary stay under this Chapter unless:

(a) the matter involves a pattern of practice; and

(b) the nationals concerned have exhausted the administrative remedies, where available, regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) above shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority of a Party within one year after the date of the institution of an administrative remedy, and the failure to issue a determination is not attributable to delay caused by the nationals concerned.

TRANSPARENCY
Publication of Laws and Regulations

Article 2 Transparency
1. Each Party shall promptly make public, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect the operation of this Agreement.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1 above.

CHAPTER 1 GENERAL PROVISIONS

Article 1 Objectives
The objectives of this Agreement are:

(a) to facilitate, promote, liberalise and provide a stable and predictable environment for economic activity between the Parties through such means as:
(i) reducing or eliminating customs duties and other barriers to trade in goods between the Parties;
(ii) improving customs clearance procedures with a view to facilitating bilateral trade in goods;
(iii) promoting paperless trading between the Parties; (iv) facilitating the mutual recognition of the results of conformity assessment procedures for products or processes;
(v) removing barriers to trade in services between the Parties;
(vi) mutually enhancing investment opportunities and
strengthening protection for investors and investments;
(vii) easing the movement of business people including professionals;
(viii) developing co-operation between the Parties in the field of intellectual property;
(ix) enhancing opportunities in the government procurement market; and
(x) encouraging effective control of and promoting cooperation in the field of anti-competitive activities; and

(b) to establish a co-operative framework for further strengthening the economic relations between the Parties through such means as:
(i) promoting regulatory co-operation in the field of financial services, facilitating development of financial markets, including capital markets in the Parties and in Asia, and improving the financial market infrastructure of the Parties;
(ii) promoting the development and use of information and communications technology (hereinafter referred to in this Agreement as “ICT”) and ICT-related services;
(iii) developing and encouraging co-operation in the field of science and technology;
(iv) developing and encouraging co-operation in the field of human resource development;
(v) promoting trade and investment activities of private enterprises of the Parties through facilitating their exchanges and collaboration;
(vi) promoting, particularly, trade and investment activities of small and medium enterprises of the Parties through facilitating their close co-operation;
(vii) developing and encouraging co-operation in the field of broadcasting; and
(viii) promoting and developing tourism in the Parties.

Article 2 Transparency
1. Each Party shall promptly make public, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect the operation of this Agreement.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1 above.

Article 3 Confidential Information
1. Nothing in this Agreement shall be construed to require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

2. Nothing in this Agreement shall be construed to require a Party to provide information relating to the affairs and accounts of customers of financial institutions.

3. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement, including business-confidential information.

Article 4 Security and General Exceptions
1. Nothing in this Agreement shall be construed:
(a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to fissionable and fusionable materials or the materials from which they are derived;
(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
(iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
(iv) relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes; or
(v) taken in time of war or other emergency within that Party or in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. In the application of paragraph 1 above, the relevant interpretations and operation of the WTO Agreement shall, where appropriate, be taken into account.

3. Nothing in this Agreement shall be construed to prevent a Party from taking any action necessary to protect communications infrastructure of critical importance from unlawful acts against such infrastructure.

Article 5 Taxation
1. Unless otherwise provided for in this Agreement, its provisions shall not apply to any taxation measures.

2. Articles 2, 3 and 4 above shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 6 Relation to Other Agreements
1. In the event of any inconsistency between this Agreement and any other agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

2. For the purposes of this Agreement, references to articles in the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to in this Agreement as "GATT 1994") include the interpretative notes, where applicable.

Article 7 Implementing Agreement
The Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to in this Agreement as "the Implementing Agreement").

Article 8 Supervisory Committee
1. A Supervisory Committee shall be established to ensure the proper implementation of this Agreement, to review the economic relationship and partnership between the Parties, and to consider the necessity of amending this Agreement for furthering its objectives.

2. The functions of the Supervisory Committee shall include:
(a) reviewing the implementation of this Agreement;

(b) discussing any issues concerning trade-related and investment related measures which are of interest to the Parties;

(c) encouraging each other to take appropriate measures which will lead to significant improvement of business environment between the Parties;

(d) considering and recommending further liberalisation and facilitation of trade in goods and services, and investment;

(e) considering and recommending ways of furthering the objectives of this Agreement through more extensive co-operation; and

(f) considering and recommending, at any time and whether or not in the context of the general review provided for in Article 10, any amendment to this Agreement or modification to the commitments herein.

3. Where there are any amendments to the provisions of the WTO Agreement on which provisions of this Agreement are based, the Parties shall, through the Supervisory Committee, consider the possibility of incorporating such amendments to this Agreement.

4. The Supervisory Committee:
(a) shall be composed of representatives of the Parties;

(b) shall be co-chaired by Ministers or senior officials of the Parties as may be delegated by them for this purpose; and

(c) may establish and delegate responsibilities to working groups.

5. To promote dialogue between the government, academia and business communities of the Parties, for the purpose of developing and enhancing the economic partnership between the Parties, the working groups may, where necessary, invite academics and business persons with the relevant expertise to participate in the discussions of the working groups.

6. The Supervisory Committee shall convene once a year in regular session alternately in each Party. Special meetings of the Supervisory Committee shall also convene, within 30 days, at the request of either Party.

Article 9 Communications
Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

Article 10 General Review
The Parties shall undertake a general review of the operation of this Agreement in 2007 and every five years thereafter.

TRADE IN GOODS

Article 18 Emergency Measures
1. Subject to the provisions of this Article, each Party may, only during the transition period and to the minimum extent necessary to prevent or remedy the injury and to facilitate adjustment:
(a) suspend the further reduction of any rate of customs duty on the good provided for in this Chapter; or

(b) increase the rate of customs duty on the good to a level not to exceed the lesser of:

(i) the most-favoured-nation applied rate of customs duty in effect at the time when the measure set out in this paragraph is taken; and
(ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; if an originating good of the other Party, which is accorded the preferential tariff treatment provided for in Article 14, as a result of the reduction or elimination of a customs duty, is being imported into the territory of the former Party in such increased quantities, in absolute terms, and under such conditions that the imports of that originating good alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry of the former Party.

2. A Party may take a measure set out in paragraph 1 above only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as “the Agreement on Safeguards”). The investigation shall in all cases be completed within one year following its date of institution.

3. The following conditions and limitations shall apply to the taking of a measure pursuant to paragraph 1 of this Article:
(a) a Party shall immediately deliver a written notice to the other Party upon:
(i) initiating an investigatory process relating to serious injury, or threat thereof, and the reasons for it;

(ii) making a finding of serious injury, or threat thereof, caused by increased imports; and
(iii) taking a decision to apply such a measure;

(b) in making the notification referred to in sub-paragraph (a) above, the Party proposing to apply a measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, a precise description of the good involved and the proposed measure, the proposed date of introduction of the measure and its expected duration;

(c) a Party proposing to apply a measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on compensation set out in paragraph 4 below. The Parties shall, in such consultations, review, inter alia, the information provided pursuant to sub-paragraph (b) above, to determine:

(i) whether the provisions of this Article have been complied with;
(ii) whether any proposed measure should be taken; and
(iii) whether any proposed measure would operate so as to constitute an unnecessary obstacle to trade between the Parties;

(d) no measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment provided that such time shall not exceed a period of one year. In very exceptional circumstances, after the prior consultations referred to in subparagraph (c) above, a measure may be maintained for up to a total maximum period of three years. A Party taking such measure shall present to the other Party a schedule leading to its progressive elimination;

(e) no measure shall be applied again to the import of a particular originating good which has been subject to the measure during the transition period; and

(f) upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

4. A Party proposing to apply a measure set out in paragraph 1 of this Article shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose levels are substantially equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on the compensation within 30 days of the commencement of the consultations pursuant to sub-paragraph (c) of paragraph 3 above, the Party against whose originating good the measure is taken shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the measure applied under paragraph 1 of this Article. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects.

5. Nothing in this Chapter shall prevent a Party from applying safeguard measures to a good being imported to that Party irrespective of its source, including such a good being imported from the other Party, unless such measures are inconsistent with Article XIX of GATT 1994 and the Agreement on Safeguards.

6. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations and decisions governing proceedings of the measure.

7. Each Party shall, to the extent provided by its laws and regulations, maintain judicial tribunals or procedures for the purpose of the prompt review of administrative actions relating to measures set out in paragraph 1 of this Article. Such

tribunals or procedures shall be independent of the authorities responsible for the determination of the measure in question.

8. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures relating to the measure.

CHAPTER 4 CUSTOMS PROCEDURES

Article 35 Scope of Chapter 4
This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.

Article 36 Customs Clearance
For prompt customs clearance of goods traded between the Parties, each Party shall:
(a) make use of information and communications technology;

(b) simplify its customs procedures; and

(c) make its customs procedures conform, as far as possible, to relevant international standards and recommended practices such as those made under the auspices of the Customs Cooperation Council.

Article 37 Temporary Admission and Goods in Transit
1. Each Party shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to in this Article as “the A.T.A. Convention”).

2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the territory of the other Party.

3. The Parties shall endeavour to promote, through seminars and courses, the use of A.T.A. carnets pursuant to the A.T.A. Convention for the temporary admission of goods and the facilitation of customs clearance of goods in transit in non-Parties.

4. For the purposes of this Article, the term “temporary admission” means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose, and shall be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 38 Exchange of Information under Chapter 4
The Parties shall exchange information as provided for in the Implementing Agreement with respect to the implementation of this Chapter. Article 3 shall not apply to such exchange of information.

Article 39 Joint Committee on Customs Procedures
1. For the purposes of effective implementation of this Chapter, a Joint Committee on Customs Procedures (hereinafter referred to in this Article as “the Committee”) shall be established. The functions of the Committee shall be:
(a) reviewing and discussing the implementation and operation of this Chapter; and

(b) identifying and recommending to the Supervisory Committee areas to be improved for facilitating trade between the Parties.

2. The composition of the Committee shall be specified in the Implementing Agreement.

CHAPTER 5 PAPERLESS TRADING

Article 40 Co-operation on Paperless Trading between the Parties
The Parties, recognising that trading using electronic filing and transfer of trade-related information and electronic versions of documents such as bills of lading, invoices, letters of credit and insurance certificates, as an alternative to paper-based methods (hereinafter referred to in this Chapter as "paperless trading"), will significantly enhance the efficiency of trade through reduction of cost and time, shall co-operate with a view to realising and promoting paperless trading between them.

Article 41 Exchange of Views and Information
The Parties shall exchange views and information on realising, promoting and developments in paperless trading.

Article 42 Co-operation on Paperless Trading between Private Entities
The Parties shall encourage co-operation between their relevant private entities engaging in activities related to paperless trading. Such co-operation may include the setting up and operation by such private entities of facilities (hereinafter referred to in this Chapter as "the Facilities") to provide efficient and secured flow of electronic trade-related information and electronic versions of relevant documents between enterprises of the Parties.

Article 43 Review of Realisation of Paperless Trading
The Parties shall review as soon as possible, and in any case, not later than 2004, how to realise paperless trading in which electronic trade-related information and electronic versions of relevant documents exchanged between enterprises of the Parties through the Facilities may be used as supporting documents by the trade regulatory bodies of the respective Parties.

Article 44 Joint Committee on Paperless Trading
1. For the purposes of effective implementation of this Chapter, a Joint Committee on Paperless Trading (hereinafter referred to in this Article as "the Committee") shall be established. The functions of the Committee shall be:
(a) reviewing and discussing issues concerning the effective implementation of this Chapter;

(b) exchanging views and information on paperless trading; and

(c) discussing other issues relating to paperless trading.

2. The composition of the Committee shall be specified in the Implementing Agreement.
(a) reviewing and discussing issues concerning the effective implementation of this Chapter;

(b) exchanging views and information on paperless trading; and

(c) discussing other issues relating to paperless trading.

CHAPTER 6 MUTUAL RECOGNITION

Article 48 Designating Authorities
Each Party shall ensure that Designating Authorities have the necessary power to designate, monitor (including verification), withdraw the designation of, suspend the designation of and withdraw the suspension of the designation of the conformity assessment bodies that conduct conformity assessment procedures based upon the requirements set out

in the applicable laws, regulations and administrative provisions of the other Party specified in the relevant Sectoral Annex.

Article 49 Verification and Monitoring of Conformity Assessment Bodies
1. Each Party shall ensure, through appropriate means such as audits, inspections or monitoring, that the registered conformity assessment bodies fulfil the criteria for designation set out in the applicable laws, regulations and administrative provisions of the other Party specified in the relevant Sectoral Annex. When applying the criteria for designation of the conformity assessment bodies, Designating Authorities of a Party should take into account the bodies' understanding of and experience relevant to the requirements set out in the applicable laws, regulations and administrative provisions of the other Party.

2. Each Party may request the other Party, by indicating in writing a reasoned doubt on whether a registered conformity assessment body complies with the criteria for designation set out in the applicable laws, regulations and administrative provisions specified in the relevant Sectoral Annex, to conduct verification of the conformity assessment body in accordance with the laws, regulations and administrative provisions of that other Party.

3. Each Party may, upon request, participate as an observer in the verification of conformity assessment bodies conducted by the Designating Authorities of the other Party, with the prior consent of such conformity assessment bodies, in order to maintain a continuing understanding of that other Party's procedures for verification.

4. The Parties shall, in accordance with the procedures to be determined by the Joint Committee on Mutual Recognition (hereinafter referred to in this Chapter as "the Committee") to be established pursuant to Article 52, exchange information on methods, including accreditation systems, used to designate the conformity assessment bodies and to ensure that the registered conformity assessment bodies fulfil the criteria for designation.

5. Each Party should encourage its registered conformity assessment bodies to co-operate with the conformity assessment bodies of the other Party.

CHAPTER 10 INTELLECTUAL PROPERTY

Article 96 Areas and Forms of Co-operation under Chapter 10
1. The Parties, recognising the growing importance of intellectual property (hereinafter referred to in this Chapter as "IP") as a factor of economic competitiveness in the knowledge-based economy, and of IP protection in this new environment, shall develop their co-operation in the field of IP.

2. The areas of the co-operation pursuant to paragraph 1 above may include:
(a) patents, trade secrets and related rights;

(b) trade marks and related rights;

(c) repression of unfair competition;

(d) copyright, designs and related rights;

(e) IP brokerage or licensing, IP management, registration and exploitation, and patent mapping;

(f) IP protection in the digital environment and the growth and development of e-commerce;

(g) technology and market intelligence; and

(h) IP education and awareness programmes.

3. The forms of the co-operation under paragraph 1 of this Article may include:
(a) exchanging information and sharing experiences on IP and on relevant IP events, activities and initiatives organised in their respective territories;

(b) jointly undertaking training and exchanging of experts in the field of IP for the purposes of contributing to a better understanding of each Party's IP policies and experiences; and

(c) disseminating information, sharing experiences and conducting training on IP enforcement.

Article 97 Joint Committee on Intellectual Property
1. For the purposes of effective implementation of this Chapter, a Joint Committee on IP (hereinafter referred to in this Article as "the Committee") shall be established. The functions of the Committee shall be:
(a) overseeing and reviewing the co-operation and implementation of this Chapter;
(b) providing advice to the Parties with regard to the implementation of this Chapter;
(c) considering and recommending new areas of co-operation under this Chapter; and
(d) discussing other issues relating to IP.

2. The composition of the Committee shall be specified in the Implementing Agreement.

Article 98 Facilitation of Patenting Process
1. Singapore shall, in accordance with its laws and regulations, take appropriate measures to facilitate the patenting process of an application filed in Singapore that corresponds to an application filed in Japan.

2. The details of such measures taken by Singapore pursuant to paragraph 1 above shall be specified in the Implementing Agreement.

Article 99 Facilitation of the Use of IP Databases
The Parties shall take appropriate measures, as set out in the Implementing Agreement, to facilitate the use of the Parties' IP databases open to the public.

Article 100 Costs of Co-operative Activities under Chapter 10
Costs of co-operative activities shall be borne in such manner as may be mutually agreed.

MARKET ACCESS TRADE IN GOODS

Article 14 Elimination of Customs Duties
1. Each Party shall eliminate its customs duties on goods of the other Party in accordance with its Schedule in Annex I. The preferential tariff treatment shall be accorded only to originating goods of the other Party whose importation meets the consignment criteria provided for in Article 27.

2. On the request of either Party, the Parties shall consult to consider:
(a) accelerating the elimination of customs duties on goods as set out in the Schedules in Annex I; or

(b) scheduling the elimination of customs duties on goods that are not yet set out in the Schedules in Annex I.

3. Any agreement for the further liberalisation of trade in goods reached as a result of consultations pursuant to paragraph 2 above shall be reflected in Annex I.

4. Each Party shall eliminate other duties or charges of any kind imposed on or in connection with the importation of goods of the other Party, if any. Neither Party shall increase or introduce other duties or charges of any kind imposed on or in connection with the importation of goods of the other Party.

5. Nothing in this Article shall prevent a Party from imposing, at any time, on the importation of any goods of the other Party:
(a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994 in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;
And

(c) fees or other charges commensurate with the cost of services rendered.

CHAPTER 13 FINANCIAL SERVICES CO-OPERATION

Article 106 Co-operation in the Field of Financial Services
The Parties shall co-operate in the field of financial services with a view to:
(a) promoting regulatory co-operation in the field of financial services;

(b) facilitating development of financial markets, including capital markets, in the Parties and in Asia; and

(c) improving financial market infrastructure of the Parties.

Article 107 Regulatory Co-operation
1. The Parties shall promote regulatory co-operation in the field of financial services, with a view to:
(a) implementing sound prudential policies, and enhancing effective supervision of financial institutions of either Party operating in the territory of the other Party;

(b) responding properly to issues relating to globalisation in financial services, including those provided by electronic means;

(c) maintaining an environment that does not stifle legitimate financial market innovations; and

(d) conducting oversight of global financial institutions to minimize systemic risks and to limit contagion effects in the event of crises.

2. As a part of regulatory co-operation as set out in paragraph 1 above, the Parties shall, in accordance with their respective laws and regulations, cooperate in sharing information on securities markets and securities derivatives markets of the respective Parties as provided for in the Implementing Agreement, for the purposes of contributing to the effective enforcement of the securities laws of each Party.

3. Articles 2 and 3 and Chapter 21 shall not apply to the co-operation between the Parties in sharing information on securities markets and securities derivatives markets as set out in paragraph 2 above.

Article 108 Capital Market Development
The Parties, recognising a growing need to enhance the competitiveness of their capital markets and to preserve and strengthen their stability in rapidly evolving global financial transactions, shall co-operate in facilitating the development of the capital markets in the Parties with a view to fostering sound and progressive capital markets and improving their depth and liquidity.

Article 109 Improvement of Financial Market Infrastructure
The Parties, recognising that efficient and reliable financial market infrastructure will facilitate trade and investment, shall co-operate in strengthening their financial market infrastructure.

Article 110 Development of Regional Financial Markets including Capital Markets
The Parties, recognising the importance of stable and well-functioning financial markets, including capital markets, shall co-operate with a view to contributing to further development of cross-border financial activities in Asia and to regional financial stability.

Article 111 Joint Committee on Financial Services Co-operation
1. For the purposes of effective implementation of this Chapter, a Joint Committee on Financial Services Co-operation (hereinafter referred to in this Article as "the Committee") shall be established. The functions of the Committee shall include:
(a) reviewing and discussing issues concerning the effective implementation of this Chapter;

(b) identifying and recommending to the Parties areas for further cooperation; and

(c) discussing other issues relating to financial services cooperation between the Parties.

2. The Committee may establish expert working groups to examine specific issues and initiatives in detail.

3. The composition of the Committee shall be specified in the Implementing Agreement.

ANNEX IVB TELECOMMUNICATIONS SERVICES

I. Scope and Definitions
1. This Annex applies to measures affecting telecommunications services where specific commitments are undertaken.

2. For the purposes of this Annex:
(a) the term "telecommunications" means the transmission and reception of signals by any electromagnetic means;

(b) the term "public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, inter alia, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

(c) the term "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

(d) the term “essential facilities” means facilities of a public telecommunications transport network or service that:
(i) are exclusively or predominantly provided by a single or limited number of suppliers; and
(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(e) the term “ major supplier” means a supplier that has the ability to materially affect the terms of participation having regard to price and supply in the relevant market for basic telecommunications services as a result of:
(i) control over essential facilities; or
(ii) use of its position in the market;

(f) the term “facilities-based suppliers” means:
(i) for Japan, Type 1 Telecommunications Carriers provided for in Article 12 of the Telecommunications Business Law (Law No. 86, 1984); or
(ii) for Singapore, Facilities-Based Operators; and

(g) the term “services-based suppliers” means:
(i) for Japan, Type 2 Telecommunications Carriers provided for in Articles 22 and 27 of the Telecommunications Business Law (Law No. 86, 1984); or
(ii) for Singapore, Services-Based Operators.

II. Competitive Safeguards
Prevention of Anti-competitive Practices in Telecommunications
1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers, who alone or together are a major supplier, from engaging in or continuing anti-competitive practices.

Safeguards
2. The anti-competitive practices referred to in paragraph 1 above shall include in particular:
(a) engaging in anti-competitive cross-subsidisation or pricing services in a manner that gives rise to unfair competition;

(b) discriminating unfairly in providing telecommunications services;

(c) using information obtained from competitors with anticompetitive results; and

(d) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Asymmetric Regulation
3. Each Party may, in accordance with its laws and regulations, determine the appropriate level of regulation required to promote fair competition.

III. Public Availability of Licensing Criteria
1. Where a licence is required, each Party shall make publicly available the following:
(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of individual licences.

2. Each Party shall make known to the applicant the reasons for the denial of a licence upon request.

IV. Interconnection
Interconnection to be Ensured
1. Each Party shall ensure interconnection between a facilities-based supplier and any other facilities-based supplier or a services-based supplier to the extent provided for in its laws and regulations.

Interconnection with Major Suppliers
2. Each Party shall ensure that a major supplier is required to provide interconnection at any technically feasible point in the network. Such interconnection is provided:
(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled(Note) so that the supplier need not pay for network components or facilities that it does not require for the services to be provided; and
Note: “Sufficiently unbundled” network components or facilities include unbundled local loop (including line sharing).

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Party shall ensure that a major supplier is required to allow other suppliers who interconnect with the major supplier:
(a) to locate their equipment which is essential for interconnection within the major supplier’s buildings;(Note 1) or

(b) to install their cables and lines which are essential for interconnection within the major supplier’s buildings,(Note 1) conduits,(Note 2) cable tunnels or telephone poles; where physically feasible and where no practical or viable alternatives exist, in order to interconnect smoothly with the essential facilities of the major supplier.

Note 1: Buildings used for communications that house a point of interconnection.

Note 2: Underground communications facilities installed to accommodate or protect underground cables and to connect manholes, etc. Interconnection Pursuant to an Approved Reference Interconnection Offer

4. Each Party shall ensure that major suppliers are required to provide a reference interconnection offer for approval by the relevant regulatory authorities. The reference interconnection offer shall be consistent with the principles of II of this Annex and shall contain written statements of the charges and conditions on which a major supplier will interconnect with suppliers. At a minimum, the reference interconnection offer shall be required to contain the following:

(a) a list and description of the interconnection-related services offered, the terms and conditions for such services, the operational and technical requirements, and the procedures or processes that will be used to order and provide such services;

(b) a list of cost-based prices that a major supplier offers for all its interconnection-related services. Where feasible, the major supplier shall be required to use an established methodology based on incremental forward-looking economic cost;

(c) standard periods between the dates of request and commencement which are stipulated in a clear manner and are reasonable; and

(d) a statement regarding the duration of the proposed interconnection agreement, if it is fixed.

5. Paragraphs 2, 3 and 4 of IV of this Annex are applied only to a major supplier which has control over essential facilities.
Public Availability of the Procedures for Interconnection Negotiations

6. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available. Transparency of Interconnection Arrangements

7. Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or reference interconnection offer.

V. Interconnection Dispute Settlement
A service supplier requesting interconnection with a major supplier shall have recourse, either:
(a) at any time; or

(b) after a reasonable period of time which has been made publicly known;
to an independent domestic body, which may be a regulatory body as referred to in VII of this Annex, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

VI. Universal Service
Each Party shall have the right to define the kind of universal service obligation it wishes to maintain. Such obligations shall not be regarded as anti-competitive per se, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

VII. Independent Regulators
The regulatory body shall be separate from, and not accountable to, any supplier of telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

VIII. Allocation and Use of Scarce Resources
Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. Each Party shall make publicly available the current state of allocated frequency bands. Each Party shall not be required to make publicly available detailed identification of frequencies allocated for specific government uses.

MOVEMENT OF LABOR

-Page 56 -
where appropriate, of such exceptions, and encouraging favourable conditions for investors of both Parties; and
(c) discussing other investment related issues concerning this Chapter.

2. The Committee may decide to hold a joint meeting with the private sector.

Article 89 Application of Chapter 8
1. In fulfilling the obligations under this Chapter, each Party shall take such reasonable measures as are available to it to ensure observance by its local governments and non-governmental bodies in the exercise of power delegated by central or local governments within its territory.

2. If a Party has entered into an international agreement on investment with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favourably consider according to investors of the other Party and to their investments, treatment, in relation to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments, no less favourable than the treatment that it accords in like circumstances to investors of that non-Party and their investments pursuant to such an agreement.

CHAPTER 9 MOVEMENT OF NATURAL PERSONS

Article 95 General Provisions for Chapter 9
1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services between the Parties or on investments of investors of a Party in the territory of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:
(a) necessary to protect public morals or to maintain public order;Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
(iii) safety.

2. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment. Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

PART VI ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS
CHAPTER 17 TRANSPARENCY

Article 17.1: Definitions
For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 17.2: Contact Points
1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. Upon request of a Party, the contact point of the other Party shall indicate the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 17.3: Publication
1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly available.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 17.4: Notification and Provision of Information
1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. Upon request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the

measure is consistent with this Agreement.

4. The information referred to under this Article shall be considered to have been provided when it has been made available by appropriate notification to the WTO or when it has been made available on the official, public and fee-free accessible website of the Party concerned.

Article 17.5: Exchange of Information on State Aid
Each Party may request information on individual cases of state aid that it believes to affect trade between the Parties. The requested Party shall make its best efforts to provide nonconfidential information.

Article 17.6: Administrative Proceedings
With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 17.3 to particular persons, goods or services of the other Party in specific cases:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided with a reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded with a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with its domestic law.

Article 17.7: Review and Appeal
1. Each Party shall establish or maintain judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record and, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 17.3: Publication
1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly available.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 17.7: Review and Appeal
Each Party shall establish or maintain judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record and, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 17.4: Notification and Provision of Information
4. The information referred to under this Article shall be considered to have been provided when it has been made available by appropriate notification to the WTO or when it has been made available on the official, public and fee-free accessible website of the Party concerned.

CHAPTER 19 DISPUTE SETTLEMENT
Section A - Dispute Settlement

Article 19.1: Cooperation
The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 19.2: Scope of Application
Except as otherwise provided in this Agreement, the provisions of this Chapter shall apply:

(a) with respect to the avoidance and settlement of disputes between the Parties regarding the interpretation or application of this Agreement; or

(b) wherever a Party considers that an existing or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 19.2.

Article 19.3: Choice of Forum

1. Disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in the forum selected by the complaining Party.

2. Once dispute settlement procedures have been initiated under Article 19.6 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated upon a request for a panel by a Party.

Article 19.4: Consultations

1. A Party may request in writing consultations with the other Party regarding any existing or proposed measure or any other matter that it considers might affect the operation and application of this Agreement.

2. The Party that requests consultations according to paragraph 1 shall indicate the provisions of the Agreement that it considers relevant and deliver the request to the other Party.

3. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

4. The Parties shall:

(a) provide information to enable a full examination of how the existing or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) give confidential treatment to any information exchanged in the course of consultations.

Article 19.5: Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures undertaken voluntarily if the Parties so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any Party. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are

concluded without an agreement between the Parties, the complaining Party may request the establishment of a panel.

Article 19.6: Request for an Arbitral Panel

1. A Party may request in writing the establishment of an arbitral panel if the matter has not been resolved pursuant to Article 19.4, within:

(a) 45 days of delivery of a request for consultations;

(b) 30 days of delivery of a request for consultations in matters regarding perishable agricultural goods; or

(c) such other period as the Parties may agree.

2. A Party may also request in writing the establishment of an arbitral panel where consultations have been held pursuant to Article 8.12.

3. Upon delivery of the request, an arbitral panel shall be established.

4. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in accordance with the provisions of this Chapter.

Article 19.7: Roster

1. The Parties shall establish, by mutual agreement, no later than six months after the entry into force of this Agreement a roster of up to 15 individuals, one-third of whom shall not be nationals of either Party, who are willing and qualified to serve as panelists. The roster members shall be appointed for a term of three years, and will automatically be reappointed for an additional three-year term, unless either Party objects.

2. Roster members shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, not be affiliated with or take instructions from, either Party; and

(d) comply with the Code of Conduct set out in Annex 19.7.

Article 19.8: Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 19.7.2.

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article

19.5.

Article 19.9: Panel Selection
1. The panel shall comprise three members.

2. Each Party shall select one panelist within 15 days from the delivery of the request for the establishment of the panel.

3. Within 15 days of the selection of the panelists under paragraph 2, the Parties shall agree on the chair of the panel. If the Parties are unable to agree on the chair within this period, the chairperson of the Commission shall select by lot the chair of the panel within five days, from among the roster members who are not nationals of either Party.

4. If a Party fails to select its panelist within the period indicated in paragraph 2, the chairperson of the Commission shall select by lot the panelist within five days, from among the roster members who are nationals of that Party.

5. Panelists shall normally be selected from the roster.

6. If a Party believes that a panelist is in violation of the Code of Conduct set out in Annex 19.7, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 19.10: Model Rules of Procedure
1. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure set out in Annex 19.10.

2. The Commission may amend when it considers necessary the Model Rules of Procedure referred to in paragraph 1.

Article 19.11: Information and Technical Advice
Upon request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate. Any information and technical advice so obtained shall be submitted to the Parties for comments.

Article 19.12: Initial Report
1. Unless the Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to Article 19.11.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected, present to the Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Rule 8 of Annex 19.10;

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 19.2, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, for resolution of the dispute.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. The Parties may submit written comments on the initial report within 14 days of its presentation.

5. In case that such written comments by the Parties are received as provided for in paragraph 4, the panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after considering such written comments.

Article 19.13: Final Report

1. The panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with the majority or minority of the opinions.

3. The final report of the panel shall be made publicly available within 15 days of its delivery to the Parties.

Article 19.14: Implementation of Final Report

1. The final report of a panel shall be binding on the Parties and shall not be subject to appeal. Unless the Parties decide otherwise, they shall implement the decision contained in the final report of the panel in the manner and within the time-frame that it orders.

2. Notwithstanding paragraph 1, where the final report of the panel states that a measure is not in compliance with this Agreement, or is causing nullification or impairment in the sense of Annex 19.2, the responding Party, wherever possible, shall abstain from executing the measure or shall abrogate it.

Article 19.15: Non-Implementation - Suspension of Benefits

1. The complaining Party may suspend the application of benefits of equivalent effect to the Party complained against if the panel resolves:

(a) that a measure is inconsistent with the obligations of this Agreement and the responding Party does not implement the final report within 30 days following the expiration of the time-frame established in such a report; or

(b) that a measure causes nullification or impairment in the sense of Annex 19.2 and the Parties do not reach a mutually satisfactory agreement on the dispute within 30 days following the expiration of the time-frame established in the final report.

2. The suspension of benefits shall last until the responding Party implements the decision of the panel's final

report or until the Parties reach a mutually satisfactory agreement on the dispute, depending on the case.

3. In considering what benefits to suspend pursuant to paragraph 1:

(a) the complaining Party should first seek to suspend benefits in the same sector(s) as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations derived of this Agreement or to have caused nullification or impairment in the sense of Annex 19.2; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector(s), it may suspend benefits in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

4. Upon written request of the Party concerned, the original panel shall determine whether the level of benefits suspended by the complaining Party is excessive pursuant to paragraph 1. If the panel cannot be established with its original members, the proceeding set out in Article 19.9 shall be applied.

5. The panel shall present its determination within 60 days from the request made pursuant to paragraph 4, or if a panel cannot be established with its original members, from the date on which the last panelist is selected. The ruling of the panel shall be final and binding. It shall be delivered to the Parties and be made publicly available.

Section B -
Domestic Proceedings and Private Commercial Dispute Settlement
Article 19.16: Interpretation of the Agreement before Judicial and Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises, in any domestic judicial or administrative proceeding of a Party, which that Party considers would merit its intervention, or if a judicial or administrative body requests the views of a Party in this regard, that Party shall notify the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the judicial or administrative body is located shall submit any agreed interpretation of the Commission to such a body, in accordance with the rules of that forum.

3. If the Commission does not reach an agreement, any Party may submit its own views to the judicial or administrative body in accordance with the rules of that forum.

Article 19.17: Private Rights
Neither Party may provide for a right of action for private parties under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 19.18: Alternative Dispute Resolution
1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration proceeding and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes under paragraph 1.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Annex 19.2 Nullification or Impairment

1. A Party may have recourse to the dispute settlement procedures under this Chapter if the application of any measure that is not inconsistent with this Agreement, results in nullification or impairment of any benefit that is reasonably expected to accrue to it under any of the following provisions contained in:

(a) Part II;

(b) Chapter 11; and

(c) Chapter 15.

2. With respect to any measure subject to an exception under Article 20.1, the Parties may not invoke:

(a) subparagraphs 1(a) and (c), to the extent that the benefit arises from any crossborder trade in services provision of Part II; or

(b) subparagraph 1(b).

Annex 19.7 Code of Conduct for Members of Panels
Definitions

1. For purposes of this Annex:

assistant means a person who, under the terms of appointment of a member, conducts research or provides support for the member;

candidate means an individual whose name is on the roster referred to in Article 19.7 and who is under consideration for appointment as a member of a panel under Article 19.9;

member means a member of a panel effectively established under Article 19.6;

proceeding, unless otherwise specified, means a panel proceeding under Chapter 19; and

staff, in respect of a member, means persons under the direction and control of the member, other than assistants.

Section I Responsibilities to the Process

2. Every candidate and member shall avoid impropriety and the appearance of impropriety, be independent and impartial, avoid direct and indirect conflicts of interests and observe high standards of conduct so that

the integrity and impartiality of the dispute settlement process are preserved. Former members shall comply with the obligations established in Sections V and VI of this Code of Conduct.

Section II Disclosure Obligations

3. Prior to confirmation of his or her selection as a member of the panel under Article 19.9, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in Rule 3 and shall disclose them by communicating them in writing to the Commission for consideration by the Parties. The obligation to disclose is a continuing duty, which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

Section III Performance of Duties by Candidates and Members

5. A candidate who accepts a selection as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.

6. A member shall carry out all duties fairly and diligently.

7. A member shall comply with this Code of Conduct.

8. A member shall not deny other members the opportunity to participate in all aspects of the proceeding.

9. A member shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

10. A member shall take all reasonable steps to ensure that the member's assistant and staff comply with Sections I, II and VI of this Code of Conduct.

11. A member shall not engage in *ex parte* contacts concerning the proceeding.

12. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Commission or is necessary to ascertain whether that candidate or member has violated or may violate this Code.

Section IV Independence and Impartiality of Members

13. A member shall be independent and impartial. A member shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

14. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

15. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.

16. A member shall not use his or her position on the panel to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.

17. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgement.

18. A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or bias.

Section V Duties in Certain Situations

19. A member or former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision or ruling of the panel.

Section VI Maintenance of Confidentiality

20. A member or former member shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others people.

21. A member shall not disclose a panel ruling prior to its publication.

22. A member or former member shall not at any time disclose the deliberations of a panel, or any member's view.

Section VII Responsibilities of Assistants and Staff

23. Sections I, II and VI of this Code of Conduct apply also to assistants and staff.

Annex 19.10 Model Rules of Procedure

Application

1. These Rules are established under Article 19.10 and shall apply to dispute settlement proceedings under Chapter 19 unless the Parties otherwise agree.

Definitions

2. For purposes of this Annex:

adviser means a person retained by a Party to advise or assist the Party in connection with the panel proceeding;

complaining Party means a Party that requests the establishment of a panel under Article 19.6;

legal holiday, with respect to a Party's Secretariat, means every Saturday and Sunday and any other day designated by that Party as a holiday for purposes of these Rules and notified by that Party to its Secretariat and by that Secretariat to the other Secretariat and the other Party;

panel means a panel established under Article 19.6;

representative of a Party means an employee of a government department or of any other government entity of a Party;

responsible Secretariat means the Secretariat of the Party complained against; and

Secretariat means the Secretariat established under Article 18.2.1.
3. Any reference made in these Rules to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of this Agreement.

Terms of Reference for Panels
4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to the panel and deliver the written reports referred to in Articles 19.13 and 19.14."

5. The Parties shall promptly deliver the agreed terms of reference to the panel, upon the designation of the last panelist.

6. If the complaining Party argues that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

7. If a Party requests the panel to make findings as to the degree of adverse trade effects on a Party of the measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 19.2, the terms of reference shall so indicate.

Written Submissions and Other Documents
8. The Parties shall deliver the original and as many copies as the Secretariat requires and in any event no less than five copies of their respective written submissions to their respective Secretariats which, in turn, shall retain a copy and forward the original and the remaining copies by the most expeditious means practicable to the responsible Secretariat. The responsible Secretariat shall deliver the submissions by the most expeditious means practicable to the other Party and the panel.

9. A complaining Party shall deliver its initial written submission to its Secretariat no later than 10 days after

the date on which the last panelist is designated. The responding Party shall deliver its written counter-submission to the responsible Secretariat no later than 20 days upon receipt of the initial written submission of the complaining Party.

10. A request, notice or other document related to the panel proceeding that is not covered by Rule 8 or 9, the Party shall deliver copies of the document to both Secretariats and to the other Party by facsimile or other means of electronic transmission.

11. A Party may correct minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

12. A Party that delivers any request, notice, written submission or other document to its Secretariat shall, to the extent practicable, also deliver a copy of the document in electronic form to that Secretariat.

13. Any delivery to a Secretariat under these Rules shall be made during the normal business hours of that Secretariat.

14. If the last day for delivery of a document to a Secretariat falls on a legal holiday observed by that Secretariat or on any other day on which the offices of that Secretariat are closed by order of the government or by force majeure, the document may be delivered to that Secretariat on the next business day.

Operation of Panels

15. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

16. Except as otherwise provided in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and computer links.

17. Only panelists may take part in the deliberations of the panel, but the panel may permit assistants, interpreters or translators to be present during such deliberations.

18. Where a procedural question arises that is not addressed by these Rules, a panel may adopt an appropriate procedure that is consistent with this Agreement.

19. If a panelist dies, withdraws or is removed from the panel, a replacement shall be selected as expeditiously as possible in accordance with the procedures to designate panelists.

20. The time-period applicable to the panel proceeding shall be suspended for a period that begins on the date on which the panelist dies, withdraws or is removed from the panel and ends on the date on which the replacement is selected.

21. A panel may, in consultation with the Parties, modify any time-period applicable in the panel proceeding and make other procedural or administrative adjustments as may be required in the proceeding, such as in cases where a panelist is replaced or where the Parties are required to reply in writing to the questions of a

panel.

Hearings

22. The chair shall fix the date and time of the hearing in consultation with the Parties, the other members of the panel and the responsible Secretariat. The responsible Secretariat shall notify the Parties in writing of the date, time and location of the hearing.

23. The hearing shall be held in the capital of the Party complained against.

24. The panel may convene additional hearings if the Parties so agree.

25. All panelists shall be present at hearings.

26. The following persons may attend a hearing:

(a) representatives of the Parties;

(b) advisers of the Parties, provided that they do not address the panel and they or their employers, partners, business associates or family members do not have a financial or personal interest in the proceeding;

(c) Secretariat personnel, interpreters, translators and court reporters (designated note takers); and

(d) panelists' assistants.

27. No later than five days before the date of a hearing, each Party shall deliver to the other Party and the responsible Secretariat a list of the names of those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will attend the hearing.

28. The hearing shall be conducted by the panel in the following manner, ensuring that the complaining Party and the Party complained against are afforded with equal time:

(a) Argument:

(i) argument of the complaining Party.

(ii) argument of the Party complained against.

(b) Reply and Counter-Reply:

(i) reply of the complaining Party.

(ii) counter-reply of the Party complained against.

29. The panel may direct questions to any Party at any time during a hearing.

30. The responsible Secretariat shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties, the other Secretariat and the panel.

Supplementary Written Submissions

31. The panel may at any time during a proceeding address questions in writing to one or both of the Parties. The panel shall deliver the written questions to the Party or Parties to whom the questions are addressed through the responsible Secretariat, which, in turn, shall provide for the delivery of copies of the questions by the most expeditious means practicable to the other Secretariat and the other Party.

32. The Party to whom the panel addresses written questions shall deliver a copy of any written reply to its Secretariat which, in turn, shall provide for delivery of that submission by the most expeditious means practicable to the other Secretariat and the panel. The other Secretariat shall provide for delivery of that submission by the most expeditious means practicable to the other Party. The other Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

33. Within 10 days after the date of the hearing, each Party may deliver to its Secretariat a supplementary written submission responding to any matter that arose during the hearing.

Burden of Proof Regarding Inconsistent Measures and Exceptions

34. The Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency.

35. The Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

Availability of Information

36. The Parties shall maintain the confidentiality of the panel's hearings, deliberations and initial report, and all written submissions to, and communications with, the panel, in accordance with the following procedures:

(a) A Party or, subject to its instructions, the Party's Secretariat, may make available to the public at any time that Party's written submissions and those of the other Party.Before such documents are made available to the public any information designated for confidential treatment by a Party pursuant to subparagraph (d) shall be removed;

(b) A Party or, subject to its instructions, the Party's Secretariat, may make the hearing transcript available to the public 15 days after the final report of the panel is made public pursuant to Article 19.13.3. Before the transcript is made available to the public, any information designated for confidential treatment by a Party pursuant to subparagraph (d) shall be removed;

(c) Where information has been removed from a document pursuant to subparagraph (a) or (b), the document shall indicate clearly where such information has been removed;

(d) To the extent it considers strictly necessary to protect personal privacy or to address essential

confidentiality concerns, a Party may designate specific information included in its written submissions, or that it has presented in the panel hearing, for confidential treatment;

(e) A Party may disclose to other persons such information in connection with the panel proceedings as it considers necessary for the preparation of its case, but it shall ensure that those persons maintain the confidentiality of any such information;

(f) A Party shall treat as confidential the initial report and information submitted by the other Party to the panel that the Party has designated as confidential pursuant to subparagraph (d);

(g) The responsible Secretariat shall take such reasonable steps as are necessary to ensure that experts, interpreters, translators, court reporters (designated note takers) and other individuals retained by the Secretariat maintain the confidentiality of the panel proceedings; and

(h) Except as provided under paragraphs (a) and (b), the Secretariat personnel shall maintain the confidentiality of the panel proceedings.

Ex Parte Contacts
37. The panel shall not meet or contact a Party in the absence of the other Party.

38. No panelist may discuss any aspect of the subject matter of the proceeding with a Party or with the Parties in the absence of the other panelists.

Official Language
39. Written submissions, oral arguments or presentations at the hearing, initial and final panel reports, as well as all other written or oral communications between the Parties and the panel, related to panel proceedings, shall be conducted in English.

Computation of Time
40. Where anything under this Agreement or these Rules is to be done, or the panel requires anything to be done, within a number of days after or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

41. Where, by reason of the operation of Rule 14, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the date of receipt of the last such document.

Suspension of Benefits Panels
42. These Rules shall apply to a panel established under Article 19.15 except that:

(a) the Party that requests the establishment of the panel shall deliver its initial written submission to its Secretariat within 10 days after the date on which the last panelist is designated;

(b) the responding Party shall deliver its written counter-submission to its Secretariat within 15 days upon

receipt of the initial written submission of the complaining Party;

(c) the panel shall fix the time limit for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time limits for panel proceedings set out in this Agreement and these Rules; and

(d) unless the Parties disagree, the panel may decide not to convene a hearing.

Responsible Secretariat
43. The responsible Secretariat shall:

(a) provide administrative assistance to the panel;

(b) provide administrative assistance to experts, panelists and their assistants, interpreters, translators, court reporters (designated note takers) or other individuals that it retains in a panel proceeding;

(c) make available to the panelists, upon confirmation of their appointment, copies of this Agreement and other documents relevant to the proceedings of the panel, such as the Uniform Regulations and these Rules;

(d) retain indefinitely a copy of the complete record of the panel proceeding; and

(e) compensate in accordance with Rules 44, 45 and 46.

Remuneration and Payment of Expenses
44. The responsible Secretariat shall establish the amounts of remuneration and expenses that will be paid to the panelists, their assistants, court reporters (designated note takers) or other individuals that it retains in a panel proceeding upon agreement by both Parties.

45. The remuneration of the amounts established under Rule 44 shall be borne equally by the Parties unless otherwise agreed by them.

46. Each panelist or other persons who participate in the panel proceeding shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

Maintenance of Rosters
47. The Parties shall inform each Secretariat of the composition of the roster established under Article 19.7. The Parties shall promptly inform their counterpart Secretariat of any changes made to the roster.

CHAPTER 5 CUSTOMS PROCEDURES

Article 5.1: Definitions
For purposes of this Chapter:

commercial importation means the importation of a good into the territory of a Party for the purpose of sale, or any commercial, industrial or other like use;

customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

determination of origin means a ruling issued as a result of origin verification process establishing that a good qualifies as an originating good in accordance with Chapter 4;

exporter means a person located in the territory of a Party from where a good is exported by such a person and required to maintain records in the territory of that Party regarding exportations of the good, pursuant to Article 5.4.5;

identical goods means "identical goods" as defined in the Customs Valuation Agreement;

importer means a person located in the territory of a Party where a good is imported by such a person and required to maintain records in the territory of that Party regarding importation of the good, pursuant to Article 5.3.4;

material means a "material" as defined in Article 4.1;

preferential tariff treatment means the duty rate applicable to an originating good, pursuant to the Parties' respective Tariff Elimination Schedules;

producer means a "producer" as defined in Article 4.1;

production means "production" as defined in Article 4.1;

adjusted value means "adjusted value" as defined in Article 4.1;

Uniform Regulations means the "Uniform Regulations" established under Article 5.12;

used means "used" as defined in Article 4.1; and

value means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter 4.

Article 5.2: Certificate and Declaration of Origin
1. The Parties shall establish, by the entry into force of this Agreement, a single form for the Certificate of Origin and a single form for the Declaration of Origin, which may thereafter be revised by agreement

between the Parties.

2. The Certificate of Origin, referred to in paragraph 1, shall certify that goods that are exported from the territory of one Party to the territory of the other Party qualify as originating. The Certificate will have a duration of two years from the date on which the Certificate was signed.

3. Each Party shall require that a Certificate of Origin for a good imported into its territory must be completed and signed in the English language, for the purpose of requesting preferential tariff treatment.

4. Each Party shall:

(a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment on importation of the good into the territory of the other Party;

(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

(i) its knowledge of whether the good qualifies as an originating good;

(ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(iii) the Declaration of Origin referred to in paragraph 1.

5. The Declaration of Origin referred to in paragraph 1 should be completed and signed by the producers of the good and provided voluntarily to the exporter. The Declaration will have a duration of two years from the date on which it was signed.

6. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter in the territory of the other Party is applicable to a single importation of a good into its own territory.

7. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Certificate of Origin that has been completed and signed prior to that date by the exporter of that good.

8. Each Party shall make all efforts to establish, according to its domestic legislation, that the Certificate of Origin completed and signed by the exporter is certified by competent governmental authorities or the body empowered by the government.

Article 5.3: Obligations Regarding Importations

1. Each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) make a written declaration, in the importation document established in its legislation, based on a valid

Certificate of Origin, that the good qualifies as an originating good;

(b) have the Certificate of Origin in its possession at the time the declaration, referred to in subparagraph (a), is made;

(c) provide, upon request of that Party's customs administration, a copy of the Certificate of Origin; and

(d) promptly make a corrected declaration and pay any duties owing, where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct. When the importer complies with such obligations, the importer shall not be penalised.

2. Each Party shall provide that, when an importer in its territory does not comply with any requirement established in this Chapter, the claimed preferential tariff treatment shall be denied for the imported goods from the territory of the other Party.

3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded with preferential tariff treatment, on presentation of:

(a) a written declaration that the good qualified as an originating good at the time of importation;

(b) a copy of the Certificate of Origin; and

(c) such other documentation relating to the importation of the good as that Party may require.

4. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into its territory maintain in that territory, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate of Origin, as the Party may require relating to the importation of the good.

Article 5.4: Obligations Regarding Exportations

1. Each Party shall provide that an exporter in its territory, or a producer in its territory that has provided a copy of a Declaration of Origin to that exporter pursuant to Article 5.2, shall provide a copy of the Certificate or Declaration of Origin to its customs administration upon request.

2. Each Party shall provide that an exporter or a producer in its territory who has completed and signed a Certificate or Declaration of Origin, and who has reason to believe that the Certificate or Declaration of Origin contains information that is not correct, notifies promptly, in writing, its customs administration and all persons, to whom the Certificate or Declaration of Origin was given by the exporter or producer, of any change that could affect the accuracy or validity of the Certificate or Declaration, depending on the case. Upon compliance with such an obligation, neither the exporter nor the producer shall be penalised for presenting an incorrect Certification or Declaration of Origin.

3. Each Party shall provide that the customs administration of the exporting Party notify in writing to the customs administration of the importing Party regarding the notification mentioned in paragraph 2.

4. Each Party shall provide that a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation. Furthermore, each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

5. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Certificate or Declaration of Origin shall maintain in its territory, for five years after the date on which the Certificate or Declaration of Origin was signed or for such a longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

(a) the purchase, cost and value of, and payment for, the good that is exported from its territory;

(b) the purchase, cost and value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory; and

(c) the production of the good in the form in which the good is exported from its territory.

Article 5.5: Exceptions
Each Party shall provide that a Certificate of Origin shall not be required for:

(a) a commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good,

(b) a non-commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, or

(c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin, provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5.2 and 5.3.

Article 5.6: Invoicing by a Non-Party Operator
When a good to be traded is invoiced by a non-Party operator, the producer or exporter of the originating Party shall notify, in the field titled "observations" of the respective Certificate of Origin, that the goods subject to declaration shall be invoiced from that non-Party, and shall notify the name, corporate name and address of the operator that will eventually invoice the operation to its destination.

Article 5.7: Confidentiality
1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential business

information collected pursuant to this Chapter and shall protect such information from disclosure that could prejudice the competitive position of the persons providing the information.

2. The confidential business information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and customs and revenue matters.

Article 5.8: Origin Verifications

1. The importing Party may request the exporting Party to provide information regarding the origin of any imported good.

2. For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, the importing Party may, through its customs administration, conduct verification solely by means of:

(a) written questionnaires and requests for required information to an exporter or a producer in the territory of the other Party;

(b) visits to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article 5.4.5 and observe the facilities used in the production of the good, or to that effect any facilities used in the production of the materials; or

(c) such other procedure as the Parties may agree.

3. The exporter or producer that receives a questionnaire pursuant to subparagraph 2(a) shall answer and return it within a period of 30 days from the date on which it was received. During this period the exporter or producer may, in only one opportunity, request in writing to the importing Party an extension of the original period, not exceeding 30 days.

4. In the case the exporter or producer does not return the questionnaire correctly answered within the given period or its extension, the importing Party may deny preferential tariff treatment.

5. Prior to conducting a verification visit pursuant to subparagraph 2(b), a Party shall, through its customs administration:

(a) deliver a written notification of its intention to conduct the visit to:

(i) the exporter or producer whose premises are to be visited;

(ii) the customs administration of the other Party; and

(iii) if requested by the other Party, the embassy of the other Party in the territory of the importing Party proposing to conduct the visit; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

6. The notification referred to in paragraph 5 shall include:

(a) the identity of the customs administration issuing the notification;

(b) the name of the exporter or producer whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;

(e) the names and titles of the officials performing the verification visit; and

(f) the legal authority for the verification visit.

7. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days after the receipt of notification pursuant to paragraph 5, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

8. Each Party shall provide that, upon receipt of notification pursuant to paragraph 5, such an exporter or a producer may, within 15 days of receiving the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree. However, this may be done in only one opportunity. For this purpose, this extension shall be notified to the customs administration of the importing and exporting Parties.

9. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 8.

10. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to designate two observers to be present during the visit, provided that:

(a) the observers do not participate in a manner other than as observers; and

(b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

11. Each Party shall, through its customs administration, where conducting the verification of origin involving a regional value content, De Minimis calculation or any other provision in Chapter 4 to which Generally Accepted Accounting Principles may be relevant, apply such principles as are applicable in the territory of the Party from which the good was exported.

12. After the conclusion of a verification, the customs administration conducting the verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether

the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

13. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such a person until that person establishes compliance with Chapter 4.

14. Each Party shall provide that where its customs administration determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the other Party, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the exporter that completed and signed the Certificate of Origin for the good of its determination.

15. A Party shall not apply a determination made under paragraph 14 to an importation made before the effective date of the determination where:

(a) the competent authorities of the other Party has issued an advanced ruling under Article 5.9 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and

(b) the advanced ruling, other ruling or consistent treatment was given prior to notification of the determination.

16. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 14, it shall postpone the effective date of the denial for a period not exceeding 90 days where the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the other Party.

Article 5.9: Advanced Rulings on Determinations of Origin

1. Each Party shall, through its competent authorities, provide for the expeditious issuance of written advanced rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by such an importer, an exporter or a producer of the good, concerning:

(a) whether a good qualifies as an originating good under Chapter 4;

(b) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex 4 as a result of production occurring entirely in the territory of one or both of the Parties;

(c) whether a good satisfies a regional value-content requirement under either the builddown method or the build-up method set out in Chapter 4;

(d) for the purpose of determining whether a good satisfies a regional value-content requirement under

Chapter 4, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Agreement, for calculating the adjusted value of the good or of the materials used in the production of the good;

(e) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter 4, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the value of an intermediate material;

(f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for dutyfree treatment in accordance with Article 3.7; or

(g) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuance of advanced rulings, including a detailed description of the information reasonably required to process an application for a ruling.

3. Each Party shall provide that its competent authorities:

(a) may, at any time during the course of an evaluation of an application for an advanced ruling, request supplemental information from the person requesting the ruling;

(b) shall, after it has obtained all necessary information from the person requesting an advanced ruling, issue the ruling within the periods specified in the Uniform Regulations; and

(c) shall, where the advanced ruling is unfavourable to the person requesting it, provide to that person with a full explanation of the reasons for the ruling.

4. Subject to paragraph 6, each Party shall apply an advanced ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such a later date as may be specified in the ruling.

5. Each Party shall provide to any person requesting an advanced ruling the same treatment, including the same interpretation and application of the provisions of Chapter 4 regarding a determination of origin, as it provided to any other person to whom it issued an advanced ruling, provided that the facts and circumstances are identical in all material respects.

6. The issuing Party may modify or revoke an advanced ruling:

(a) if the ruling is based on an error:

(i) of fact;

(ii) in the tariff classification of a good or a material that is the subject of the ruling;

(iii) in the application of a regional value-content requirement under Chapter 4; or

(iv) in the application of the rules for determining whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article 3.7;

(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 or Chapter 4;

(c) if there is a change in the material facts or circumstances on which the ruling is based;

(d) to conform with a modification of Chapter 3, Chapter 4, this Chapter or the Uniform Regulations; or

(e) to conform with a judicial or administrative decision or a change in its domestic law.

7. Each Party shall provide that any modification or revocation of an advanced ruling is effective on the date on which the modification or revocation is issued, or on such a later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advanced ruling was issued has not acted in accordance with its terms and conditions.

8. Notwithstanding paragraph 7, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advanced ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

9. Each Party shall provide that where its competent authorities examines the regional value content of a good for which it has issued an advanced ruling pursuant to subparagraphs 1(d), (e) and (f), it shall evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advanced ruling;

(b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advanced ruling is based; and

(c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

10. Each Party shall provide that where its competent authority determines that any requirement in paragraph 9 has not been satisfied, it may modify or revoke the advanced ruling as the circumstances may warrant.

11. Each Party shall provide that, where the person to whom an advanced ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, and where the competent authority of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties.

12. Each Party shall provide that where it issues an advanced ruling to a person that has misrepresented or omitted material facts or circumstances on which such a ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply such measures as the circumstances may warrant.

13. The Parties shall provide that the person to whom the advanced ruling was issued may use it only while the material facts or circumstances that were the basis of its issuance are still present. In this case, the person to whom the advanced ruling was issued may present the necessary information for the issuing authority to proceed pursuant to paragraph 6.

14. A good that is subject to an origin verification process or any instance of review or appeal in the territory of one of the Parties may not undergo an advanced ruling.

Article 5.10: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advanced rulings by its customs administration, as it provides to importers in its territory, to any person:

(a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin pursuant to Article 5.8.12; or

(b) who has received an advanced ruling pursuant to Article 5.9.

2. Each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

(a) at least one level of administrative review independent of the official or office responsible for the determination under review; and

(b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

Article 5.11: Penalties

1. Each Party shall maintain measures imposing criminal, civil or administrative responsibilities for violations of its laws and regulations relating to this Chapter.

2. Nothing in Articles 5.3.1(d), 5.3.2, 5.4.2, 5.8.4, 5.8.7 or 5.8.9 shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Article 5.12: Uniform Regulations

1. The Parties shall establish and implement, through their respective laws or regulations, by the date of entry into force of this Agreement, or at any time thereafter upon agreement of the Parties, the Uniform Regulations regarding the interpretation, application and administration of Chapter 3, Chapter 4, this Chapter and other matters as may be agreed by the Parties.

2. As of the entry into force of the Uniform Regulations, each Party shall implement any modification of or

addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Article 5.13: Cooperation

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

(a) a determination of origin issued as the result of a verification conducted pursuant to Article 5.8, once the instances of review and appeal pursuant to Article 5.10 have been exhausted;

(b) a determination of origin that the Party is aware is contrary to:

(i) a ruling issued by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the value of a good, that is the subject of a determination of origin; or

(ii) consistent treatment given by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the value of a good, that is the subject of a determination of origin;

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and

(d) an advanced ruling, or a ruling modifying or revoking an advanced ruling, pursuant to Article 5.9.

2. The Parties shall cooperate:

(a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;

(b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonisation of documentation used in trade, the standardisation of data elements, the acceptance of an international data syntax and the exchange of information;

(c) to the extent practicable, in the storage and transmission of customs-related documentation;

(d) in the origin verification process of a good, for which the customs administration of the importing Party may request the other Party's customs administration to cooperate in this process of verification in its own territory;

(e) to search for a certain mechanism with the purpose of detecting and preventing the illicit shipment of goods arriving from one of the Parties or from a non-Party; and

(f) to jointly organise training programmes in customs related issues, which should include training for customs officials as well as users that directly participate in customs procedures.

Article 5.14: Review
In the second year from the date of entry into force of this Agreement, the Parties shall examine and revise, if deemed necessary by the Parties, the system regarding the Certificate or Declaration of Origin under this Chapter.

TECHNICAL STANDARDS

Article 9.5: Compatibility
1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter and the WTO Agreement, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. The Parties shall, to the greatest extent practicable, work to make compatible their respective standards-related measures, without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights granted to either Party under this Chapter, and taking into account international standardization activities so as to facilitate the trade of a good between the Parties.

3. A Party shall, upon request of the other Party, seek, as far as possible and through appropriate measures, to promote the compatibility of a specific standard-related measure that is maintained in its territory with the standards-related measures maintained in the territory of the other Party.

Article 9.6: Conformity Assessment Procedures

6. Recognizing that it should be to the mutual advantage of the Parties, each Party shall accredit, approve, or otherwise recognize conformity assessment bodies in the territory of the other Party, on terms no less favorable than those accorded to conformity assessment bodies in its territory.

CHAPTER 8 SANITARY AND PHYTOSANITARY MEASURES

Article 8.1: Definitions
For purposes of this Chapter, the definitions and terms established under the following shall be applied:

(a) Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement (SPS Agreement);

(b) Office International des Epizooties (OIE);

(c) International Plant Protection Convention (IPPC); and

(d) Codex Alimentarius Commission (CODEX).

Article 8.2: General Provisions
1. This Chapter applies to all sanitary and phytosanitary measures, which may, directly or indirectly, affect trade between the Parties.

2. The Parties shall, through mutual cooperation, facilitate agricultural, fishing and forest trade without such trade posing a sanitary or phytosanitary risk, and agree to prevent the introduction or spread of pests or diseases, and to enhance plant and animal health and food safety.

3. The framework of rules and disciplines that guide the adoption and enforcement of the sanitary and phytosanitary measures included in this Chapter is deemed to be consistent with the SPS Agreement.

4. Any other sanitary or phytosanitary matter which is not described in this Chapter shall be dealt with in accordance with the SPS Agreement.

Article 8.3: Rights of the Parties
The Parties may, in accordance with the SPS Agreement:

(a) adopt, maintain or apply any sanitary or phytosanitary measure whenever it is necessary for the protection of human, animal or plant life or health in their territories in accordance with this Chapter; and

(b) apply their sanitary or phytosanitary measures to the extent necessary to achieve an appropriate level of protection.

Article 8.4: Obligations of the Parties
Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies:

(a) is neither applied in a manner that constitutes a disguised restriction on trade, nor has the purpose or the effect of creating unnecessary obstacles to trade between the Parties;

(b) is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in Article 5.7 of the SPS Agreement; and

(c) does not arbitrarily or unjustifiably discriminate between its goods and similar goods of the other Party, or between goods of the other Party and similar goods of any other country, where identical or similar conditions exist.

Article 8.5: International Standards and Harmonization
1. Without reducing the level of protection of human, animal or plant life or health, each Party shall base its sanitary and phytosanitary measures on relevant international standards, guidelines or recommendations, where they exist, with a view to seeking harmonization.

2. Notwithstanding paragraph 1, the Parties may adopt a sanitary or phytosanitary measure offering a level of protection other than the level that would be achieved through a measure based on an international standard, guideline or recommendation, including a more stringent measure than the foregoing, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection the Party

determines to be appropriate in accordance with the relevant provisions of Article 5 of the SPS Agreement.

3. For purposes of achieving a higher degree of harmonization, the Parties shall, to the greatest extent possible, cooperate in the development of international standards, guidelines and recommendations to all aspects of sanitary and phytosanitary measures, and follow the standards, guidelines and recommendations set by the following organizations:

(a) on plant health issues, the IPPC;

(b) on animal health issues, the OIE; and

(c) on food safety issues, the CODEX.

4. For matters not covered by the international organizations listed in paragraph 3, the Parties may consider, as agreed by the Parties, the standards, guidelines and recommendations of other relevant international organizations of which both Parties are members.

Article 8.6: Equivalence

1. Each Party shall accept the sanitary and phytosanitary measures of the other Party as equivalent, even if these measures differ from its own measures, if the exporting Party objectively demonstrates to the other Party that its measures achieve the other Party's appropriate level of sanitary or phytosanitary protection.

2. For purposes of ensuring that sanitary and phytosanitary measures of the exporting Party consistently meet the importing Party's requirements, the exporting Party shall, upon request, provide the importing Party with reasonable access to its territory for the verification of its systems or procedures of inspection, testing and other relevant procedures.

Article 8.7: Risk Assessment and Determination of Appropriate Sanitary and Phytosanitary Level of Protection

1. The Parties shall ensure that their sanitary and phytosanitary measures are, as appropriate to the circumstances, based on an assessment of the risks to human, animal or plant life or health, taking into account relevant risk assessment guidelines and techniques developed by the relevant international organizations.

2. The Parties shall, in assessing risks and determining a sanitary or phytosanitary measure, take into account available scientific evidence and other factors, such as:

(a) the prevalence of pests or diseases;

(b) the existence of pest- or disease-free areas;

(c) the relevant ecological and environmental conditions;

(d) the effectiveness of eradication or control programs;

(e) the structure and organization of sanitary and phytosanitary services; and

(f) the control, monitoring, diagnosis and other procedures ensuring the safety of the product.

3. In assessing risks to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of protection from such risks, the Parties shall take into account the following relevant economic factors:

(a) the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease;

(b) the cost of control or eradication in the territory of the importing Party; and

(c) the relative cost-effectiveness of alternative approaches to limiting risks.

4. The Parties shall, in establishing their appropriate levels of protection, take into account the objective of minimizing negative trade effects and shall, with the purpose of achieving consistency in the application of such levels of protection, avoid arbitrary or unjustifiable distinctions that may result in discrimination or constitute a disguised restriction on the trade between the Parties.

5. Where a Party determines that available scientific information is insufficient, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including information from relevant international organizations and from sanitary or phytosanitary measures of the other Party and any other countries. The Party shall, once it has the information sufficient to complete the assessment, complete its assessment and, where appropriate, review the provisional sanitary or phytosanitary measure within a reasonable period of time.

Article 8.8: Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties shall adapt its sanitary or phytosanitary measures relating to animal or plant pest or disease to the sanitary or phytosanitary characteristics of the area of origin and destination of the goods. When assessing the characteristics of an area, the Parties shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines, which may be developed by the relevant international organizations.

2. The Parties shall recognize, in particular according to relevant international standards, the concepts of pest- or disease-free areas or areas of low pest or disease prevalence. When determining such areas, the Parties shall consider factors, such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in that area.

3. The Party declaring that an area in its territory is free from or low prevalence of a specific pest or disease shall provide the necessary evidence thereof in order to demonstrate such a condition objectively and to the satisfaction of the other Party, and give assurances that the area shall remain as such based on protection measures adopted by the authorities responsible for sanitary and phytosanitary services.

4. The Party interested in obtaining the recognition of a pest- or disease-free area or areas of low pest or

disease prevalence shall make the request, and provide the relevant scientific and technical information to the other Party. For this purpose, the requesting Party shall provide reasonable access to its territory to the other Party for inspection, testing and other relevant procedures.

5. If the request for recognition is rejected, the rejecting Party shall provide the technical reasons for its decision in writing.

Article 8.9: Control, Inspection and Approval Procedures

1. The Parties shall, in accordance with this Chapter, apply the provisions in Annex C of the SPS Agreement in relation to control, inspection or approval procedures, including systems for approving the use of additives or for establishing levels of tolerance for contaminants in food, beverages or feedstuffs.

2. The importing Party may verify whether the imported animals, plants and other related products are consistently in compliance with its sanitary and phytosanitary requirements. The Parties shall facilitate proceedings for such verification.

Article 8.10: Transparency

1. Each Party shall notify through its competent authorities, modification of a sanitary or phytosanitary measure and provide the related information in accordance with the provisions in Annex B of the SPS Agreement.

2. In addition, to ensure the protection of human, animal or plant life or health in the other Party, each Party shall notify:

(a) changes or modifications to sanitary and phytosanitary measures having a significant effect on trade between the Parties, at least 60 days before the effective date of the new provision, to allow for observations from the other Party. The 60-day period shall not apply to emergency situations, as established in Annex B of the SPS Agreement;

(b) changes occurring in the animal health field, such as the appearance of exotic diseases and those in List A of the OIE, within 24 hours following their provisional diagnosis;

(c) changes occurring in the phytosanitary field, such as the appearance of a quarantine pest and spread of a pest under official control, within 24 hours following verification of the pest;

(d) food control emergency situations where there is a clearly identified risk of serious adverse health effects associated with the consumption of certain food, within 24 hours of the identification of the risk; and

(e) discoveries of epidemiological importance and significant changes related to diseases and pests not included in subparagraphs 2(b) and (c) that may affect trade between the Parties, within a maximum period of ten days following the verification of such diseases and pests.

Article 8.11: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures ("Committee"), comprising representatives of each Party, who are responsible for sanitary and phytosanitary issues in the

fields of animal and plant health, food safety and trade.

2. The Committee shall be set up not later than 30 days after the entry into force of this Agreement.

3. The Committee shall carry out the functions necessary to implement the provisions of this Chapter, including, but not limited to:

(a) coordinating the application of the provisions of this Chapter;

(b) facilitating consultations on specific matters related to sanitary or phytosanitary measures;

(c) establishing and determining the scope and mandate of the sub-committees;

(d) promoting technical cooperation between the Parties, including cooperation in the development, adoption and enforcement of sanitary and phytosanitary measures; and

(e) monitoring the compliance with the provisions of this Chapter.

4. The Committee shall establish, if the need arises and the Parties so agree, the following sub-committees: Sub-Committees on Animal Health, Plant Protection and Food Safety. The members of these sub-committees shall be designated by the relevant authorities in their respective fields.

5. The sub-committees shall carry out the following functions, including, but not limited to:

(a) preparing terms of reference for their activities within the scope of their competence and informing results thereof to the Committee;

(b) concluding specific agreements on matters of interest, involving higher technical operating details, to be submitted to the Committee; and

(c) establishing expeditious information exchange mechanisms to deal with consultations between the Parties.

6. The Committee shall meet once every two years, except as otherwise agreed. If an additional meeting is requested by a Party, it will be held in the territory of the other Party. The sub-committees shall meet, upon request of a Party. The meetings may also be held by telephone, video conference or other means, upon the agreement of both Parties.

7. The Committee shall report annually to the Commission on the implementation of this Chapter.

Article 8.12: Technical Consultations

1. A Party may initiate consultations with the other Party if uncertainty arises with regard to the application or interpretation of the content of a sanitary or phytosanitary measure under this Chapter.

2. Where a Party requests consultations and so notifies the Committee, the Committee shall facilitate

consultations, and may refer the matter at issue to an *ad hoc* working group or another forum, for providing non-binding technical assistance or recommendations to the Parties.

3. A Party asserting that the interpretation or application of a sanitary or phytosanitary measure of the other Party is inconsistent with the provisions of this Chapter shall bear the burden to prove such inconsistency.

4. Where the Parties, pursuant to this Article, have carried out consultations without reaching satisfactory results, such consultations, if so agreed by the Parties, shall constitute consultations under Article 19.4.

Article 9.5: Compatibility

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter and the WTO Agreement, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

PART V INTELLECTUAL PROPERTY RIGHTS
CHAPTER 16 INTELLECTUAL PROPERTY RIGHTS

Article 16.1: Obligations
1. Each Party shall provide, in its territory, to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become unnecessary barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall faithfully implement the international conventions it has acceded to, including the TRIPS Agreement.

Article 16.2: More Extensive Protection
A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement and the TRIPS Agreement.

Article 16.3: Protection of Trademarks
1. Article 6 *bis* of the Paris Convention shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well known, the Parties shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party concerned, obtained as a result of the promotion of the trademark.

2. If the use of a trademark is required by the legislation of a Party to maintain registration, the registration may be cancelled only after an uninterrupted period of at least three years of nonuse, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner.

3. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 16.4: Protection of Geographical Indications

1. For the purpose of this Agreement, geographical indications are indications, which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. With the recognition of the importance of the protection of geographical indications, both Parties shall protect, in compliance with their respective domestic legislation, the geographical indications of the other Party registered and/or protected by that other Party, that fall within the scope of protection stated in Articles 22, 23 and 24 of the TRIPS Agreement. Further to the acceptance of this obligation, both Parties shall not permit the importation, manufacture and sale of products, in compliance with their respective domestic legislation, which use such geographical indications of the other Party, unless such products have been produced in that other Party.

3. Chile shall protect the geographical indications listed in Annex 16.4.3 for their exclusive use in products originating in Korea. Chile shall prohibit the importation, manufacture and sale of products with such geographical indications, unless they have been produced in Korea, in accordance with the applicable Korean law.

4. Korea shall protect the geographical indications listed in Annex 16.4.4 for their exclusive use in products originating in Chile. Korea shall prohibit the importation, manufacture and sale of products with such geographical indications, unless they have been produced in Chile, in accordance with the applicable Chilean law. This shall in no way prejudice the rights that Korea may recognize, in addition to Chile, exclusively to Peru with respect to "Pisco".

5. Within two years from the entry into force of this Agreement, both Parties shall enter into consultations to protect additional geographical indications. As a result of these consultations, both Parties shall protect and/or recognize, under the terms stated in this Agreement, the geographical indications listed in Annex 16.4.5 and any additional geographical indications submitted by the Parties that fall within the scope of protection of geographical indications set out in Articles 22, 23 and 24 of the TRIPS Agreement.

Article 16.5: Enforcement

The Parties shall provide in their respective laws for the enforcement of intellectual property rights consistent with the TRIPS Agreement, in particular, Articles 41 to 61 thereof.

Article 16.6: Consultative Mechanism

Any consultations between the Parties with respect to the implementation or interpretation of this Chapter shall be carried out under the dispute settlement procedures referred to in Chapter 19.

Section C - Tariffs

Article 3.4: Tariff Elimination
1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty or adopt any customs duty on a good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Tariff Elimination Schedule set out in Annex 3.4.

3. If at any moment a Party reduces its most-favoured-nation customs duties to non-Parties for one or more goods included in the Agreement, the Parties shall consult to consider adjusting the customs duties applicable to reciprocal trade.

4. Upon request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Tariff Elimination Schedules.

5. The agreement reached pursuant to paragraph 4 regarding the accelerated elimination of customs duties on an originating good shall be put into effect in accordance with Article 18.1 and each Party's applicable legal procedures, and shall prevail over any other duty rate or staging category, determined pursuant to its Tariff Elimination Schedule for the good.

6. Except as otherwise provided in this Agreement, either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 3.4, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

Article 21.5: Work Program on Financial Services
Unless otherwise agreed by the Parties, the authorities responsible for financial services will meet four years after the entry into force of this Agreement, to discuss the viability and convenience of incorporating financial services into this Agreement.

TELECOMMUNICATION SERVICES
STANDARDS REQUIREMENTS

Article 12.5: Standards-Related Measures
1. Further to the TBT Agreement, each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction;

(e) ensure users' safety and access to public telecommunications transport networks or services;

(f) ensure the electrical safety of communication equipment; or

(g) facilitate the efficient utilization of radio spectrum resources.

2. A Party may require, before an unauthorized terminal or other equipment may be marketed, an approval for the attachment to the public telecommunications transport network, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis. 4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Further to the TBT Agreement, each Party shall:

(a) ensure that its conformity assessment procedures are transparent and nondiscriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures. For the detailed procedures and methods for mutual recognition of testing laboratories and mutual acceptance of test reports, follows the procedures and methods as prescribed in the "Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (adopted on May 8, 1998)" shall be taken into consideration by the Telecommunication Committee.

7. The Parties hereby establish a Committee on Telecommunications Standards, comprising representatives of each Party.

8. The Committee on Telecommunications Standards shall perform the functions set out in Annex 12.5.8.

CHAPTER 19 TRANSPARENCY

ARTICLE 19.1: DEFINITIONS

For the purposes of this Chapter:

Administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
(b) a ruling that adjudicates with respect to a particular act or practice.

ARTICLE 19.2: PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall in accordance with its domestic laws, regulations and procedures:

(a) publish in advance any such laws, regulations, procedures, and administrative rulings that it proposes to adopt; and
(b) provide interested persons and the other Party a reasonable opportunity to comment on such measures.

ARTICLE 19.3: NOTIFICATION AND PROVISION OF INFORMATION

1. To the maximum extent possible, each Party shall notify the other Party of any measure that, the Party considers, may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. Upon request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any measure, whether or not the other Party has been previously notified of that measure.

3. Any notification, or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

4. Any notification, request, or information under this Article shall be provided to the other Party through the relevant contact points.

ARTICLE 19.4: ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial and reasonable manner all measures referred to in Article 19.2, each Party shall ensure that in its administrative proceedings applying such measures to particular persons, goods or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided with a reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded with a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with its domestic law.

ARTICLE 19.5: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and
(b) a decision based on the evidence and submissions of record and, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

ARTICLE 5.13: CUSTOMS CO-OPERATION

The Parties shall co-operate through their respective customs administrations on:

(e) Transparency:

(i) Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, either on the Internet or in print form;

(ii) Each Party shall designate, establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall make available on the Internet information concerning procedures for making such inquiries; and

(iii) For the purposes of certainty, nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

CHAPTER 20 DISPUTE SETTLEMENT

ARTICLE 20.1: CO-OPERATION

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 20.2: SCOPE AND COVERAGE

1. Unless otherwise agreed by the Parties elsewhere in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance and settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or wherever a Party considers that a measure of the other Party is inconsistent with the

obligations of this Agreement or causes nullification or impairment of any benefit accruing to it directly or indirectly under Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin), and 9 (Cross Border Trade on Services).

2. Unless otherwise agreed by the Parties, the timeframes and procedural rules set out in this Chapter and its Annex[es] shall apply to all disputes governed by this Chapter.

3. Findings, determinations and recommendations of an arbitral panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by the relevant authorities within the territory of a Party. When an arbitral panel has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance within its territory.

5. The Parties and the arbitral panel appointed under this Chapter shall interpret and apply the provisions of this Agreement in the light of the objectives of this Agreement and in accordance with customary rules of public international law.

ARTICLE 20.3: CHOICE OF FORUM

1. Disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in the forum selected by the complaining Party.

2. Once dispute settlement procedures have been initiated under Article 20.6 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated upon a request for a panel by a Party.

ARTICLE 20.4: CONSULTATIONS

1. A Party may request in writing consultations with the other Party on any matter affecting the implementation, interpretation or application of this Agreement or whenever a party considers that any measure or any other matter that is inconsistent with the obligations of this Agreement or causes nullification or impairment of any benefit accruing to it directly or indirectly under Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin), and 9 (Cross Border Trade in Services).

2. If a request for consultation is made, the Party to which the request is made shall reply to the request within ten (10) days after the date of its receipt and shall enter into consultations within a period of no more than twenty (20) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:
(a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and
(b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

ARTICLE 20.5: GOOD OFFICES, CONCILIATION OR MEDIATION

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel established under Article 20.6.

ARTICLE 20.6: REQUEST FOR AN ARBITRAL PANEL

1. A Party may request in writing for the establishment of an arbitral panel if the matter has not been resolved pursuant to Article 20.4, within forty-five (45) days after the date of receipt of the request for consultations.

2. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.

3. Upon delivery of the request, an arbitral panel shall be established.

4. Unless otherwise agreed by the Parties, an arbitral panel shall be established and perform its functions in accordance with the provisions of this Chapter.

ARTICLE 20.7: COMPOSITION OF ARBITRAL PANELS

1. The arbitral panel referred to in Article 20.6 shall consist of three (3) members. Each Party shall appoint a member within thirty (30) days of the receipt of the request under Article 20.6. The Parties shall jointly appoint the third member who shall serve as the chair of the arbitral panel within thirty (30) days of the appointment of the second member.

2. If the Parties are unable to agree on the chair of the arbitral panel within thirty (30) days after the date on which the second member has been appointed, they shall within the next ten (10) days exchange their respective list comprising four (4) nominees each who shall not be nationals of either Party. The chair shall then be appointed in the presence of both Parties by lot from the lists within forty (40) days from the date of appointment of the second member. If a Party fails to submit its list of four (4) nominees, the chair shall be appointed by lot from the list already submitted by the other Party.

3. If a member of the arbitral panel appointed under this Article becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original member and the successor shall have all the powers and duties of the original member. In such a case, any time period applicable to the arbitral panel proceedings shall be suspended for a period beginning on the date when the original member becomes unable to act and ending on the date when the new member is appointed.

4. Any person appointed as a member of the arbitral panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the bases of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same bases throughout the course of the arbitration proceedings. If a Party believes that a member is in violation of the bases stated above, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chair shall not have his or her usual place of residence in the territory of, nor be employed by, either Party.

ARTICLE 20.8: TERMINATION OF PROCEEDINGS
The Parties may agree to terminate the proceedings before an arbitral panel at any time by jointly notifying the chair to this effect.

ARTICLE 20.9: PROCEEDINGS OF ARBITRAL PANELS
1. Unless the Parties agree otherwise, the arbitral panel shall follow the model rules of procedure in the Annex 20A, which shall ensure:

(a) that an arbitral panel shall meet in closed session;
(b) a right to at least one hearing before the arbitral panel;
(c) an opportunity for each Party to provide initial and rebuttal submissions;
(d) that each Party's written submissions, written versions of its oral statement, and written response to a request or question from the arbitral panel may be made public after they are submitted, subject to clause (g);
(e) that the arbitral panel may consider requests from non-governmental entities in the Parties' territories to provide written views regarding the dispute that may assist the arbitral panel in evaluating the submissions and arguments of the Parties;
(f) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to paragraph 3 of Article 20.11; and
(g) the protection of confidential information.

2. The arbitral panel may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules.

ARTICLE 20.10: INFORMATION AND TECHNICAL ADVICE
1. Upon request of a Party, or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate. Any information and technical advice so obtained shall be made available to the Parties.

2. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral panel may request advisory reports in writing from an expert or experts. The arbitral panel may, at the request of a Party or on its own initiative, select, in consultation with the Parties, scientific or technical experts who shall assist the arbitral panel throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral panel.

ARTICLE 20.11: INITIAL REPORT
1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to Article 20.10.

2. Unless the Parties otherwise agree, the arbitral panel shall, within ninety (90) days after the last member is selected, present to the Parties an initial report containing:

(a) findings of law and/or fact together with reasons;
(b) its determination as to the implementation, interpretation or application of this Agreement or whether the measure at issue is inconsistent with the obligations of this Agreement or causes nullification or impairment of any benefit accruing to a Party under this Agreement, or any other determination requested in the terms of reference; and
(c) its recommendations, if any, on the means to resolve the dispute.

3. The Parties may submit written comments on the initial report within fourteen (14) days of its presentation.

4. In case that such written comments by the Parties are received as provided for in paragraph 3, the arbitral panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after considering such written comments.

ARTICLE 20.12: FINAL REPORT

1. The arbitral panel shall present a final report to the Parties, within thirty (30) days of presentation of the initial report, unless the Parties otherwise agree.

2. The final report of the arbitral panel shall be made publicly available within fifteen (15) days of its delivery to the Parties.

ARTICLE 20.13: IMPLEMENTATION OF FINAL REPORT

1. The final report of an arbitral panel shall be binding on the Parties and shall not be subject to appeal.

2. On receipt of the final report of an arbitral panel, the Parties shall agree on:

(a) the means to resolve the dispute, which normally shall conform with the determinations or recommendations, if any, of the arbitral panel; and

(b) the reasonable period of time which is necessary in order to implement the means to resolve the dispute. If the Parties fail to agree on the reasonable period of time, a Party may request the original arbitral panel to determine the length of the reasonable period of time, in the light of the particular circumstances of the case. The determination of the arbitral panel shall be presented within fifteen (15) days from that request.

3. If, in its final report, the arbitral panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure has caused nullification or impairment, the means to resolve the dispute shall, whenever possible, be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 20.14: NON-IMPLEMENTATION – COMPENSATION AND SUSPENSION OF BENEFITS

1. If the Parties
(a) are unable to agree on the means to resolve the dispute pursuant to paragraph 2(a) of Article 20.13 within thirty (30) days of issuance of the final report; or

(b) have agreed on the means to resolve the dispute pursuant to Article 20.13 and the Party complained against fails to implement the aforesaid means within thirty (30) days following the expiration of the reasonable period of time determined in accordance with paragraph 2(b) of Article 20.13, the Party complained against shall enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation has been reached within twenty (20) days after the Parties have entered into negotiations on compensatory adjustment, the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to that Party of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits thirty (30) days after the date when it provides notice to the Party complained against under this paragraph, or the date when the arbitral panel issues the report under paragraph 6, whichever is later.

3. Any suspension of benefits shall be restricted to benefits granted to the Party complained against under this Agreement.

4. In considering what benefits to suspend under paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
(b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement, or to have caused nullification or impairment has been removed, or a mutually satisfactory solution is reached.

6. If the Party complained against considers that:

(a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or
(b) it has eliminated the non-conformity, nullification or impairment that the arbitral panel has found, it may request the original arbitral panel to determine the matter. The original arbitral panel shall present its determination to the Parties within thirty (30) days after it reconvenes.

7. If the arbitral panel cannot be reconvened with its original members, the procedures for appointment for the arbitral panel set out in Article 20.7 shall be applied.

ARTICLE 20.15: OFFICIAL LANGUAGE
1. All proceedings and all documents submitted to the arbitral panel shall be in the English language.

2. When an original document submitted to the arbitral panel by a Party is not in the English language, that Party shall translate it into the English language and submit it with the original document at the same time.

ARTICLE 20.16: EXPENSES
1. Unless the Parties otherwise agree, the costs of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

2. Each Party shall bear its own expenses and legal costs in the arbitral proceedings.

CHAPTER 5 CUSTOMS PROCEDURES

ARTICLE 5.1 : DEFINITIONS

For the purposes of this Chapter:

certificate of origin means respective forms used for purposes of claiming preferential tariff treatment in the importing Party, certifying that an exported good qualifies as an originating good in accordance with Chapter 4 (Rules of Origin), on the basis of documentary evidence or reliable information;

certification body means a body referred to in Annex 5A;

customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

exporter means a person located in the territory of a Party from where a good is exported by such a person;

importer means a person located in the territory of a Party where a good is imported by such a person;

identical goods means "identical goods" as defined in the Customs Valuation Agreement; producer is as defined in Article 4.1;

production is as defined in Article 4.1;

Cost and Production Statement means a declaration made by the producer, in the calculation of the regional value content, the HS tariff classifications of the product and its non-originating material used, to determine the originating status of the good. The declaration should be signed by a designated authority, generally the managing director or accountant of the company. The declaration may be made by the importer or exporter, if he or she has pertinent information to the production of the good. Notwithstanding the above, the producer shall not be required to provide the information to the importer or the exporter;

value means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter 4 (Rules of Origin);

Declaration for Preference means an application for claiming preferential tariff treatment declared, on the basis of a certificate of origin or any other documentary evidence of origin, by an importer to the customs administration as part of the import application that an imported good qualifies as an originating good in accordance with Chapter 4.

ARTICLE 5.2 : CERTIFICATE OF ORIGIN

1. The Parties shall adopt two respective forms of the certificate of origin as set out in Annex 5B and Annex 5C, which may be revised by agreement between the Parties.

2. The respective certificate of origin, referred to in paragraph 1, shall be issued by the certification bodies of the exporting Party.

3. The issued certificate of origin shall be valid for twelve (12) months from the date of issue.

4. Each Party shall inform, through its customs administration, the other Party of the names and addresses of the authorised signatories issuing this certificate of origin and shall provide specimen impressions of signatures and official seals used by such signatories. Any change in names, addresses, signatures or official seals shall be promptly notified to the other Party.

5. Each Party shall:
(a) require an exporter in its territory to complete and sign an application for certificate of origin for any good which an importer may claim preferential tariff treatment on importation of the good into the territory of the other Party; and

(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign an application for a certificate of origin on the basis of:
(i) the exporter’s knowledge that the good qualifies as an originating good; or
(ii) the exporter’s reasonable reliance on the producer’s written representation that the good qualifies as an originating good.

6. The certificate of origin shall be issued in the English language.

7. Each Party shall provide that a certificate of origin that has been issued by authorised body designated by each Party is applicable to a single importation of a good into its territory.

8. In cases where a certificate of origin has not been issued at the time of exportation or soon thereafter due to involuntary errors or omissions or other valid causes, the certificate of origin may be issued retrospectively but not later than one year from the date of shipment.

ARTICLE 5.3 : CLAIMS FOR PREFERENTIAL TREATMENT

1. Each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) make a declaration for preference as part of the import application prescribed by its legislation, based on importer's knowledge or information including a valid certificate of origin, that the good qualifies as an originating good;

(b) submit the certificate of origin or other documentary evidence of origin at the time of the declaration referred to in subparagraph (a), to its customs administration upon request; and

(c) promptly make a corrected declaration and pay any duties owing, where the importer has reason to believe that a certificate of origin on which a declaration was based contains information that is incorrect.

2. Each Party shall provide that the importing Party applies preferential tariff treatment only in cases where an importer proves the accuracy of origin of the imported goods through documentary evidence or any other relevant information in accordance with its laws and regulations.

3. A Party may deny preferential tariff treatment to an imported good if the importer fails to comply with requirements of this Chapter.

4. The importing Party shall grant preferential tariff treatment to goods imported after the date of entry into force of this Agreement, in cases where the importer does not have the certificate of origin or other documentary evidence of origin at the time of importation, provided that:

(a) the importer had, at the time of importation, indicated to the customs administration of the importing Party his intention to claim preferential tariff treatment; and

(b) the certificate of origin or other documentary evidence of origin is submitted to its customs administration within such period from the date of payment of customs duties in accordance with the domestic laws and regulations in the importing Party.

ARTICLE 5.4 : OBLIGATIONS RELATING TO EXPORTATIONS

1. Each Party shall provide that an exporter or a producer in its territory shall submit a copy of the certificate of origin or other documentary evidence of origin to its customs administration upon request.

2. Each Party shall provide that a false statement by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall be penalised for a contravention of its customs laws and regulations regarding the making of a false statement or representation. Furthermore, each Party may apply such

measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

ARTICLE 5.5 : RECORD KEEPING REQUIREMENT

1. Each Party shall provide that an exporter and a producer in its territory that has obtained a certificate of origin shall maintain in its territory, for five (5) years after the date on which the certificate of origin was issued or for such longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

(a) the purchase of, cost of, value of, shipping of, and payment for, the good that is exported from its territory;

(b) the sourcing of, the purchase of, cost of, value of, and payment for, all materials, including neutral elements, used in the production of the good that is exported from its territory; and

(c) the production of the good in the form in which the good is exported from its territory.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for five (5) years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the certificate of origin, as the Party may require relating to the importation of the good.

3. The records to be maintained in accordance with paragraphs 1 and 2 shall include electronic records and shall be maintained in accordance with the domestic laws and practices of each Party.

ARTICLE 5.6 : WAIVER OF CERTIFICATE OF ORIGIN

1. Notwithstanding paragraph 1(b) of Article 5.3, a certificate of origin shall not be required for:

(a) an importation of a good whose aggregate customs value does not exceed USD 1,000 or its equivalent amount in the Party’s currency, or such higher amount as it may establish; or

(b) an importation of a good into the territory of the importing Party, for which the importing Party has waived the requirement for a certificate of origin in accordance with its domestic laws and practices provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5.2 and 5.3.

2. The importing Party may request the importer in paragraph 1 to provide relevant documents to certify that the good qualifies as an originating good.

ARTICLE 5.7 : VERIFICATIONS FOR PREFERENTIAL TARIFF TREATMENT

1. For the purposes of determining whether a good imported into its territory from the territory of the other Party is eligible for preferential tariff treatment, the importing Party may, through its customs administration, conduct a verification, which may be in sequence, by means of:

(a) request for a certificate of origin from the importer;

(b) request for Cost and Production Statement and information from the importer for cases where the importer is able to prepare it on the basis of the importer’s own documentary evidence or information;

(c) request for Cost and Production Statement and information from an exporter or a producer in the territory of the other Party through the other Party's customs administration;

(d) visit to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in paragraph 1 of Article 5.5 and observe the facilities used in the production of the good, or to that effect any facilities used in the production of the materials; or

(e) such other procedure as the Parties may agree to.

2. The importer, exporter or producer that receives a written request pursuant to subparagraphs (a), (b) or (c) of paragraph 1 shall answer and return it within a period of thirty (30) days from the date on which it was received. During this period, the importer, exporter or producer may have one opportunity to make a written request to the Party conducting the verification for an extension of the answering period, for a period not exceeding thirty (30) days.

3. In the case where the importer, exporter, or producer does not return the written request for information made by the importing Party within the given period or its extension, or that the information provided is false or incomplete, the Party may deny preferential tariff treatment.

4. Prior to conducting a verification visit pursuant to subparagraph 1(d), a Party shall through its customs administration:

(a) deliver a written notification of its intention to conduct the visit to:

(i) the exporter or producer whose premises are to be visited; and
(ii) the customs administration of the other Party; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

5. Where an exporter or producer has not given its written consent to a proposed verification visit within thirty (30) days from the receipt of notification pursuant to paragraph 4, the notifying Party may deny preferential tariff treatment to the relevant good.

6. Each Party shall provide that, upon receipt of notification pursuant to paragraph 4, such an exporter or producer may, within fifteen (15) days of receiving the notification, have one opportunity to request to the Party conducting the verification for a postponement of the proposed verification visit, for a period not exceeding sixty (60) days. This extension shall be notified to the customs administration of the importing and exporting Parties.

7. A Party shall not deny preferential tariff treatment to a good solely because a verification visit was postponed pursuant to paragraph 6.

8. After the conclusion of a verification visit, the Party conducting the verification, shall provide the exporter or producer whose good was verified, with a written determination of whether the good is eligible for preferential tariff treatment, based on the relevant law and findings of fact.

9. Where verifications by a Party show that an exporter or producer repeatedly makes false or unsupported representations that a good imported into the Party's territory qualifies as an originating good, the Party may suspend the preferential tariff treatment to be accorded to subsequent shipment of identical good exported or produced by such a person until that person establishes that the shipment complies with Chapter 4 (Rules of Origin), in accordance with its

domestic laws, regulations or practices. The importing Party shall inform the customs administration of the exporting Party on the evidence and details of the suspension made.

ARTICLE 5.8 : ADVANCE RULINGS

1. Prior to the importation of a good into its territory, each Party, through its customs administration, shall provide for the issuance of written advance rulings to an importer of the good in its territory or to an exporter or producer of the good in the other Party's territory concerning tariff classification, questions arising from the application of the Customs Valuation Agreement and country of origin so as to determine whether the good qualifies as an originating good.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including:

(a) the provision that an importer or its agent in its territory or an exporter or producer or their agent in the territory of the other Party may request such a ruling prior to the importation in question;

(b) a detailed description of the information required to process a request for an advance ruling; and

(c) the provision that the advance ruling be based on the facts and circumstances presented by the person requesting the ruling.

3. Each Party shall provide that its customs administrations:
(a) may request, at any time during the course of evaluating an application for an advance ruling, additional information necessary to evaluate the application;

(b) shall issue the advance ruling expeditiously, and in any case within ninety (90) days of obtaining all necessary information; and

(c) shall provide, upon request of the person who requested the advance ruling, a full explanation of the reasons for the ruling.

4. The importing Party may modify or revoke the issued ruling:

(a) if the ruling was based on an error of fact;

(b) if there is a change in the material facts or circumstances on which the ruling was based;

(c) to conform with an amendment to this Agreement; or

(d) to conform with a judicial or administration decision or a change in its domestic laws and regulations.

5. Each Party shall provide that any modification or revocation of an advance ruling is effective on the date on which the modification or revocation is issued, or on such a later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

6. Notwithstanding paragraph 5, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding sixty (60) days where the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

7. Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances or failed to act in accordance with the terms and conditions of the ruling, the Party may impose penalties or deny the preferential tariff treatment as the circumstances may warrant.

8. A good that is subject to an origin verification process or any instance of review or appeal in the territory of one of the Parties may not be the subject of an advance ruling.

9. Subject to paragraph 10, each Party shall apply an advance ruling to importations into its territory of the relevant good from the date of its issuance or from such later date as may be specified in the ruling.

10. The importing Party shall apply the advance ruling for three (3) years from the date of issuance of the ruling.

ARTICLE 5.9 : DENIAL OF PREFERENTIAL TARIFF TREATMENT

Except as otherwise provided in this Chapter, each Party may, notwithstanding the requirements of Articles 5.3, 5.4, 5.5, 5.6 and 5.7 and any other legal requirements imposed under its law have been satisfied, deny the applicable preferential tariff treatment to an originating good imported into its territory:

(a) if the declared origin of the imported good is not supported by documentary evidence presented by an importer in its territory, or an exporter or a producer in the territory of the other Party;

(b) if an exporter or a producer in the territory of the other Party does not allow the customs administration of the importing Party access to information required to make a determination of whether the goods or the materials is originating by the following or other means:

(i) denial of access to its records and/or documents;
(ii) failure to respond to a cost and production statement or information requested; or
(iii) failure to maintain records or documentation relevant to determine the origin of the good in accordance with the requirement of this Chapter;

(c) if, where the good is shipped through or transshipped in the territory of a country that is not a Party under this Agreement, the importer of the good does not provide, on the request of that Party's customs administration:

(i) a copy of the customs control documents that indicate, to the satisfaction of the importing Party’s customs administration, that the goods remained under customs control while in the territory of such non-Parties;

(ii) any other information given by the customs administration of such non-Parties or other relevant entities, which evidences that they have not undergone, in such non-Parties, operation other than unloading, reloading, crating, packing, repacking or any other operation necessary to keep them in good condition; or

(iii) any other information or commercial documents given by the importer which evidence that they have not undergone, in such non-Parties, operation other than unloading, reloading, crating, packing, repacking or any other operation necessary to keep them in good condition; or

(d) if, within thirty (30) days after the request of the customs administration of the importing Party, the producer, exporter or importer of a good, which has undergone processes of production or operation outside the territory of a Party, fails to submit all the necessary documentary evidence to prove that the good satisfies all the requirements set out in Article 4.4, including that has been obtained from the performer of the processes of production or operation outside the territory of the Party. Notwithstanding the above, the producer, exporter or importer of a good may have one opportunity to make a written request to the customs administration of the importing Party for an extension of the submission period, for a period not exceeding thirty (30) days.

ARTICLE 5.10 : TEMPORARY ADMISSION AND GOODS IN TRANSIT

1. Each Party shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods.

2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the territory of the other Party.

ARTICLE 5.11 : REVIEW AND APPEAL

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings by its customs administration, as it provides to importers in its territory, to any person:

(a) who has obtained a certificate of origin or completed a cost and production statement for a good that has been the subject of a determination of origin under this Chapter; or

(b) who has received an advance ruling pursuant to Article 5.8.

2. Each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

(a) at least one level of administrative review[1] independent of the official or office responsible for the determination under review; and
(b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review[2].

ARTICLE 5.12 : PENALTIES

Each Party shall maintain measures imposing criminal or administrative penalties, whether solely or in combination, for violations of its laws and regulations relating to this Chapter.

ARTICLE 5.13 : CUSTOMS CO-OPERATION

The Parties shall co-operate through their respective customs administrations on:

(a) Verification of Origin:

(i) The Parties shall co-operate through their respective customs administrations in the origin verification process of a good, for which the customs administration of the importing Party may request the other Party's customs administrations to co-operate in this process of verification in its own territory; and

[1] For Singapore, the level of administrative review may include the Ministry supervising the Customs administration.
[2] The review of the determination or decision taken at the final level of administrative review in Singapore may take the form of a common law judicial review.

(ii) A Party may, if it considers necessary, station customs liaison officers in the local embassy to work with the host government, for information exchange pertaining to origin verification;

(b) Paperless Customs Clearance:

(i) The Parties shall, as they deem fit, simplify and streamline customs procedures through the domestic integration of customs systems with other controlling agencies, with a view to enhancing paperless customs clearance;

(ii) The Parties shall endeavour to provide an electronic environment that supports business transactions between their respective customs administrations and their trading communities; and

(iii) The Parties shall exchange views and information on realising and promoting paperless customs clearance between their respective customs administrations and their trading communities;

(c) Risk Management:

(i) The Parties shall adopt risk management approach in its customs activities based on its identified risk of goods in order to facilitate the clearance of low risk consignments, while focusing its inspection activities on high-risk goods; and

(ii) The Parties shall exchange information on risk management techniques in the performance of their customs procedures;

(d) Sharing of Best Practices and Information:

(i) The Parties may, as they deem fit, organise training programmes in customs-related issues, which should include training for customs officials as well as users that directly participate in customs procedures; and

(ii) The Parties may, as they deem fit, facilitate initiatives for the exchange of information on best practices in relation to customs procedures and matters in accordance with their respective domestic customs laws; and

(e) Transparency:

(i) Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, either on the Internet or in print form;

(ii) Each Party shall designate, establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall make available on the Internet information concerning procedures for making such inquiries; and

(iii) For the purposes of certainty, nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

ARTICLE 5.14 : IMPLEMENTATION OF OBLIGATIONS

1. The provisions in this Chapter must be implemented by the Parties by the time that this Agreement enters into force.

2. Each Party must implement all its obligations through the institution of legal or administrative changes and where necessary amend its domestic laws to support the implementation of the obligations undertaken.

ARTICLE 5.15: CUSTOMS CONTACT POINTS AND AD HOC CUSTOMS COMMITTEE
1. Each Party shall discharge all its obligations that are undertaken in accordance with this Chapter.

2. Each Party shall designate the contact point set out in Annex 5D for all matters relating to this Chapter and Chapter 4 (Rules of Origin).

3. Upon the receipt of any matter raised by the customs administration of a Party, the customs administration of the other Party shall assign its own experts to look into the matter and to respond with its findings and proposed solution for resolving the matter within a reasonable time.

4. The Parties shall endeavour to resolve any matter raised under this Article through consultations between contact points. If the matter cannot be so resolved, the matter shall be referred to a customs committee established on an ad hoc basis pursuant to Article 22.1.

ARTICLE 5.16 : CONFIDENTIALITY
1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises, public or private.

2. Each Party shall, in accordance with its domestic laws, maintain the confidentiality of information collected pursuant to this Chapter and protect it from disclosure that could prejudice the competitive position of the persons providing the information.

ARTICLE 5.17 : REVIEW
The Parties shall review the certification system agreed under this Chapter for issuing the certificate of origin at the review as provided in Article 22.1.

CHAPTER 8 TECHNICAL BARRIERS TO TRADE AND MUTUAL RECOGNITION

ARTICLE 8.1 : OBJECTIVE
The objectives of this Chapter are to increase and facilitate trade between the Parties through:

(a) the full implementation of the WTO Agreement on Technical Barriers to Trade (“WTO TBT Agreement”);

(b) enhancing bilateral co-operation by deepening their mutual understanding and awareness of their respective standards, technical regulations and conformity assessment systems; and

(c) creating and improving the business climate so as to increase business opportunities.

ARTICLE 8.2 : SCOPE AND MODALITIES
1. This Chapter applies to standards, technical regulations and conformity assessment procedures that may directly or indirectly affect trade in goods between the Parties and/or assessments of manufacturers or manufacturing processes.

2. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures and/or assessments of manufacturers or manufacturing processes, with a view to facilitating market access.

In particular, the Parties shall seek to identify initiatives that are appropriate for particular issues or sectors. Such initiatives may include co-operation on regulatory issues, such as, alignment to international standards, reliance on supplier's declaration of conformity, and use of accreditations to qualify conformity assessment bodies.

3. In this respect, the Parties recognise that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, including:

(a) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;

(b) accreditation procedures for qualifying conformity assessment bodies;

(c) government designation of conformity assessment bodies;

(d) recognition by a Party of the results of conformity assessments performed in the other Party's territory;

(e) voluntary arrangements between conformity assessment bodies from each Party's territory; and

(f) the importing Party's acceptance of a supplier's declaration of conformity. To this end, the Parties shall intensify their exchanges of information on the variety of mechanisms to facilitate the acceptance of conformity assessment results. Any such arrangements shall be formalised in a Sectoral Annex, as appropriate.

4. In accordance with Article 2.4 of the WTO TBT Agreement, where technical regulations are required and relevant international standards exist or their completion is imminent, the Parties shall use them, or the relevant parts of such standards, as a basis for their Mandatory Requirements, except when such international standards or relevant parts of such standards would be an ineffective or inappropriate means for the legitimate objectives pursued, for instance, as a result of fundamental climatic or geographical factors or fundamental technological problems.

5. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5, and Annex 3 of the WTO TBT Agreement exists, each Party shall apply the principles set out in "Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2 and 5, and Annex 3 of the Agreement) in the Decisions and Recommendations adopted by the Committee since 1 January 1995", G/TBT/1/Rev.8, 23 May 2002 and its Revision issued by the WTO Committee on Technical Barriers to Trade.

6. This Chapter does not apply to sanitary and phytosanitary measures as defined in the WTO Agreement on Application of Sanitary and Phytosanitary Measures which are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

Article 8.3 : Definitions

1. For the purposes of this Chapter, all general terms concerning standards, and conformity assessment used in this Chapter shall have the meaning given in the definitions contained in the International Organisation for Standardisation/International Electrotechnical Commission (ISO/IEC) Guide 2:2004 "Standardization and related activities – General vocabulary" and ISO/IEC 17000:2004 "Conformity assessment – Vocabulary and general principles" published by the ISO and IEC, unless the context otherwise requires and as appropriate.

2 In addition, the following terms and definitions shall apply to this Chapter and its

Sectoral Annexes unless a more specific meaning is given in the specified Sectoral Annex:

accept means the use of the results of conformity assessment procedures as a basis for regulatory actions such as approvals, licences, registrations and post-market assessments of conformity assessment;

acceptance has an equivalent meaning to accept;

certification body means a body, including product or quality systems certification bodies, that may be designated by a Party in accordance with this Chapter to conduct certification on compliance with its or the other Party's standards and/or specifications to meet relevant mandatory requirements;

confirmation means the confirmation of the compliance of the manufacturing or test facility with the criteria for confirmation by a competent authority of a Party pursuant to the mandatory requirements of the other Party;

competent authority means an authority of a Party with the power to conduct inspection or audits on facilities in its territory to confirm their compliance with mandatory requirements;

conformity assessment means any procedure concerned with determining directly or indirectly whether products, manufacturers or manufacturing processes fulfil relevant standards and/or specifications to meet relevant mandatory requirements set out in the respective Party's mandatory requirements. The typical examples of conformity assessment procedures are sampling, testing, inspection, evaluation, verification,certification, registration, accreditation and approval, or their combinations; conformity assessment body ("CAB") means a body that conducts conformity assessment procedures;

designation means the authorisation by a Party's designating authority of its CAB to undertake specified conformity assessment procedures pursuant to the mandatory requirements of the other Party;

designate has an equivalent meaning to "designation";

Designating Authority means a body established in the territory of a Party with the authority to designate, monitor, suspend or withdraw designation of conformity assessment bodies to conduct conformity assessment procedures within its jurisdiction in accordance with the other Party's mandatory requirements;

mandatory requirements means a Party's applicable laws, regulations and administrative provisions; mutual recognition means that each Party, on the basis that it is accorded reciprocal treatment by the other Party:

(a) accepts the test reports of conformity assessment procedures of the other Party to demonstrate conformity of products and/or manufacturers/manufacturing processes with its mandatory requirements when the conformity assessment procedures are undertaken by conformity assessment bodies designated by the other Party in accordance with this Chapter, i.e., mutual recognition of test reports; or

(b) accepts the certification of results of conformity assessment procedures of the other Party to demonstrate conformity of products and/or manufacturers/manufacturing processes with its mandatory requirements when the conformity assessment procedures are undertaken by conformity assessment bodies designated by the other Party in accordance with this Chapter, i.e., mutual recognition of certification of conformity assessment; registered conformity assessment body ("registered CAB") means a CAB registered pursuant to Article 8.5;

registration means the authorisation by a Party's Designating Authority of a CAB proposed by the other Party to undertake specified conformity assessment procedures pursuant to the Party's mandatory requirements;

Regulatory Authority means an entity that exercises a legal right to determine the mandatory requirements, control the import, use or supply of products within a Party's territory and may take enforcement action to ensure that products marketed within its territory comply with that Party's mandatory requirements including assessments of manufacturers/manufacturing processes of products;

Sectoral Annex is an Annex to this Chapter which specifies the implementation arrangements in respect of a specific product sector;

stipulated requirements means the criteria set out in a Sectoral Annex for the designation of CAB;

technical regulations shall have the same meaning as in the WTO TBT Agreement; test facility means a facility, including independent laboratories, manufacturers' own test facilities or government testing bodies, that may be designated by one Party's Designating Authority in accordance with this Chapter to undertake tests according to the other Party's mandatory requirements; and

verification means an action to verify in the territories of the Parties, by such means as audits or inspections, compliance with the stipulated requirements for designation or criteria for confirmation by a conformity assessment body or a manufacturing or test facility respectively.

3. For the purposes of this Chapter the singular should be read to include the plural and vice-versa, when appropriate.

Article 8.4 : Origin
This Chapter applies to all products and/or assessments of manufacturers or manufacturing processes of products traded between the Parties, regardless of the origin of those products, unless otherwise specified in a Sectoral Annex, or unless otherwise specified by any mandatory requirement of a Party.

Article 8.5 : Mutual Recognition of Conformity Assessment
Scope
1. This Article shall apply to:
(a) mandatory requirements and/or assessments of manufacturers or manufacturing processes, maintained by the Parties to fulfill their legitimate objectives and appropriate level of protection; and

(b) the conformity assessment bodies and conformity assessment procedures for products as may be specified in the Sectoral Annexes.

2. For the purposes of this Article, a Sectoral Annex shall include inter alia:

(a) provisions on scope and coverage;

(b) applicable laws, regulations and administrative provisions, i.e., mandatory requirements of each Party concerning the scope and coverage;

(c) applicable laws, regulations and administrative provisions of each Party stipulating the requirements covered by this Article, all the conformity assessment procedures covered by this Article to satisfy such requirements and the stipulated

requirements or criteria for designation of conformity assessment bodies or the confirmation of the manufacturing or test facilities covered by this Article; and

(d) the list of Designating Authorities or competent authorities.

Obligations
3. Each Party shall accept, in accordance with the provisions of this Article, the results of conformity assessment procedures required by the mandatory requirements of that Party specified in the relevant Sectoral Annex, including certificates and marks of conformity, that are conducted by the registered CABs of the other Party.

4. Korea shall accept the results of conformity assessment procedures to demonstrate conformity of products with its mandatory requirements when the conformity assessment procedures are undertaken by CABs designated by Singapore's Designating Authority and registered by Korea's Designating Authority in accordance with this Article.

5. Singapore shall accept the results of conformity assessment procedures to demonstrate conformity of products with its mandatory requirements when the conformity assessment procedures are undertaken by CABs designated by Korea's Designating Authority and registered by Singapore's Designating Authority in accordance with this Article.

Designating Authorities
6. For the purposes of this Article, each Party shall:

(a) unless otherwise provided in the relevant Sectoral Annex, designate a single Designating Authority to designate CABs to conduct conformity assessment procedures for products traded between the Parties, whether imports or exports;

(b) then notify the other Party of such designation and any subsequent changes thereof;

(c) notify the other Party of any scheduled changes concerning its Designating Authority; and

(d) ensure that its Designating Authority:

(i) has the necessary power to designate, monitor (including verification), withdraw the designation of, suspend the designation of, and lift the suspension of the designation of, the CABs that conduct conformity assessment procedures within its territory based upon the requirements set out in the other Party's mandatory requirements as specified in the relevant Sectoral Annex; and

(ii) consults, as necessary, with the relevant counterpart in the other Party to ensure the maintenance of confidence in conformity assessment procedures including processes. The consultations may include joint participation in audits related to conformity assessment procedures or other assessments of registered CABs, where such participation is appropriate, technically possible and within reasonable cost.

Registration of CABs

7. The following procedures shall apply to the registration of a CAB:

(a) each Party shall make a proposal that a CAB of that Party designated by its Designating Authority be registered under this Article, by presenting its proposal in writing, supported by the necessary documents, to the other Party and the TBT Joint Committee established in accordance with Article 8.7 ("TBT Joint Committee");

(b) the other Party shall consider whether the proposed CAB complies with the stipulated and mandatory requirements specified in the relevant Sectoral Annex and communicate, to the Party making the proposal and the TBT Joint Committee in writing, the other Party's position regarding the registration of that CAB along with estimated date of registration within ninety (90) days from the date of receipt of the proposal referred to in paragraph (a). In such consideration, such other Party should assume that the proposed CAB complies with the aforementioned criteria. The TBT Joint Committee shall, within ninety (90) days from the date of receipt of the position of such other Party, decide whether to register the proposed CAB. Following the TBT Joint Committee's decision, a Party's Designating Authority shall inform the other Party about the date of registration of the proposed CAB within seven (7) days from the date of receipt of the TBT Joint Committee's decision; and

(c) In the event that the TBT Joint Committee cannot decide to register the proposed CAB, the TBT Joint Committee may decide to conduct joint verification with or request the proposing Party to conduct a verification of the proposed CAB with the prior consent of the CAB. After the completion of such verification, the TBT Joint Committee may reconsider the proposal.

8. The proposing Party shall provide the following information in its proposal for registration of a CAB and keep such information up-to-date:

(a) the name and address of the CAB;

(b) the products or processes the CAB is designated to assess;

(c) the conformity assessment procedures the CAB is designated to conduct; and

(d) the designation procedure and necessary information used to determine the compliance of the CAB with the stipulated requirements for designation.

9. Each Party shall ensure that its Designating Authority withdraws the designation of its CAB registered by the Designating Authority of the other Party when its Party's Designating Authority considers that the CAB no longer complies with the stipulated and mandatory requirements of the other Party set out in the relevant Sectoral Annex. The withdrawal of the designation shall be notified in writing to the other Party and the TBT Joint Committee. Each Party shall terminate the registration of a CAB when the Designating Authority of the other Party withdraws the designation of its CAB. The date of termination of registration of the CAB shall be the date of receipt of notification for withdrawal from the other Party.

10. Each Party shall propose the termination of the registration of its CAB when that Party considers that the CAB no longer complies with the stipulated requirements and mandatory requirements of that Party specified in the relevant Sectoral Annex. Proposal for terminating the registration of that CAB shall be made to the TBT Joint Committee and the other Party in writing. The registration of that CAB shall be terminated upon receipt by the Parties of the decision of the TBT Joint Committee.

11. In the case of a registration of a new CAB, the other Party shall accept the results of conformity assessment procedures conducted by that CAB from the date of the registration. In the event that the registration of a CAB is terminated, the other Party shall accept the results of the conformity assessment procedures conducted by that CAB prior to the termination, without prejudice to paragraphs 18 and 19.

12. Each Party shall notify the other Party of any scheduled changes concerning its designated CABs.

13. The Parties shall notify the general public of the registration of CABs, on a sector-by-sector basis.

Verification and Monitoring of Conformity Assessment Bodies

14. Each Party shall ensure that its Designating Authority:

(a) shall undertake through appropriate means such as audits, inspections or monitoring, that the registered CABs designated by the Party fulfill the stipulated and mandatory requirements set out in the Sectoral Annex. When applying the stipulated requirements for designation of the CABs, the Designating Authority of a Party should take into account the bodies' understanding of and experience relevant to the mandatory requirements of the other Party;

(b) shall monitor and verify that the registered CABs designated by a Party maintain the necessary technical competence to demonstrate the conformity of a product with the standards, and/or specifications to meet the mandatory requirements of the other Party. This may include participation in appropriate proficiency-testing programmes and other comparative reviews such as mutual recognition agreements between non-governmental entities, so that confidence in their technical competence to undertake the required conformity assessment is maintained; and

(c) shall exchange information concerning the procedures such as accreditation systems used to designate CABs and to ensure that the registered CABs designated by a Party are technically competent and comply with the relevant stipulated requirements.

15. When in doubt, a Party may request other designating Party in writing whether or not a registered CAB complies with the stipulated requirements for that Party's designation as set out in the mandatory requirements in the Sectoral Annex and/or request for a verification of the CAB to be conducted in accordance with that Party's mandatory requirements.

16. A Party may, with the prior consent of the other Party, participate at its own expense, in the verification process of the CAB conducted by the Designating Authority of the other Party, provided that there is prior consent of such CABs, in order to maintain a continuing understanding of that other Party's procedures for verification.

17. Each Party shall encourage its registered CABs to co-operate with the CABs of the other Party.

Suspension and Lifting the Suspension of Designation of Conformity Assessment Bodies

18. In case of suspension of the designation of a registered CAB, the Party, shall immediately notify the other Party and the TBT Joint Committee of the suspension. The registration of that CAB shall be suspended from the date of receipt of the decision of the TBT Joint Committee. The other Party shall accept the results of the conformity assessment procedures conducted by that CAB prior to the suspension of the designation.

19. In the case of lifting of suspension of the designation of a registered CAB, the Party shall immediately notify the other Party and the TBT Joint Committee of the lifting of suspension. The lifting of suspension of the registration of that CAB shall be effective from the date of the receipt of the decision of the TBT Joint Committee. The other Party shall accept the results of the conformity assessment procedures conducted by that CAB from the date of lifting of the suspension of the registration.

Challenge

20. Each Party shall have the right to challenge a registered CAB's technical competence and compliance with the relevant stipulated requirements specified in the Sectoral Annex. This right shall be exercised only in exceptional circumstances and when supported by relevant expert analysis and/or evidence. A Party shall exercise this

right by notifying the other Party and the TBT Joint Committee in writing.

21. Except in urgent circumstances, the Party shall, prior to a challenge exercised under paragraph 20, enter into consultations with the other Party with a view to seeking a mutually satisfactory solution. In urgent circumstances, consultations shall take place immediately after the right to challenge has been exercised. In all cases, consultations shall be conducted with a view to resolving all issues and seeking a mutually satisfactory solution within twenty (20) days or as specified in the relevant Sectoral Annex. If this is not achieved, the TBT Joint Committee shall be convened to resolve the matter.

22. Unless the TBT Joint Committee decides otherwise, the registration of the challenged CAB shall be suspended by the relevant Designating Authority for the relevant scope of designation from the date when its technical competence or compliance is challenged, until either:

(a) the challenging Party is satisfied as to the competence and compliance of the CAB; or

(b) the designation of that CAB has been withdrawn.

23. The Sectoral Annex may provide for additional procedures such as verification and time limits to be followed in relation to a challenge. This may involve the TBT Joint Committee being activated. Where the TBT Joint Committee decides to conduct a joint verification, it shall be conducted in a timely manner by the Parties with the participation of the Designating Authority that designated the challenged CAB and with the prior consent of the CAB. The result of such joint verification shall be discussed in the TBT Joint Committee with a view to resolving the issue within twenty (20) days or the time limit specified in the Sectoral Annex.

24. The results of conformity assessment procedures undertaken by a challenged CAB on or before the date of its suspension or withdrawal shall remain valid for acceptance for the purposes of paragraphs 4 and 5.

Article 8.6 : Confidentiality

1. A Party shall not be required to disclose confidential proprietary information to the other Party except where such disclosure would be necessary for the other Party to demonstrate the technical competence of its designated CAB and conformity with the relevant stipulated requirements.

2. A Party shall, in accordance with its applicable laws and regulations, protect the confidentiality of any proprietary information disclosed to it in connection with conformity assessment procedures and/or designation activities.

3. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:

(a) be contrary to its essential security interests;

(b) be contrary to the public interest as determined by its domestic laws, regulations and administrative provisions;

(c) be contrary to any of its domestic laws, regulations and administrative provisions including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(d) impede law enforcement; or

(e) prejudice legitimate commercial interests of particular public or private

enterprises.

Article 8.7 : TBT Joint Committee

1. A TBT Joint Committee shall be established on the date of entry into force of this Agreement and it shall be responsible for the effective implementation of this Chapter.

2. The TBT Joint Committee shall be led by co-chairs from both Parties. The cochairs shall be the initial contact point for the exchange of information. For this purpose, the Parties shall, through the co-chairs:

(a) broaden their exchange of information;

(b) notify any change in their mandatory requirements in accordance with their WTO obligations; and

(c) give favourable consideration to any written request for consultation. Each Party shall respond to a written request for information from the other Party in print or electronically without undue delay, and in any case within fifteen (15) days from the date of the request, at no cost or at reasonable cost.

3. The TBT Joint Committee shall comprise representatives from both Parties.

4. The TBT Joint Committee shall make decisions and adopt recommendations by consensus. The TBT Joint Committee shall meet, under the co-chairmanship of both Parties, when necessary to discharge its function, including upon the request of either Party.

5. The TBT Joint Committee shall:
(a) be responsible for administering and facilitating the effective functioning of this Chapter and applicable Sectoral Annex(es), including:

(i) facilitating the extension of this Chapter, such as the addition of new Sectoral Annexes or an increase in the scope of existing Sectoral Annexes;
(ii) resolving any questions or disputes relating to the interpretation or application of this Chapter and applicable Sectoral Annex(es);
(iii) deciding on the registration of a CAB, suspension of registration of a CAB, lifting of suspension of registration of a CAB, and termination of registration of a CAB with reference to Article 8.5;
(iv) maintaining, unless the TBT Joint Committee decides otherwise, a list of registered CABs on a sector- by- sector basis;
(v) establishing appropriate modalities of information exchange referred to in this Chapter;
(vi) appointing experts from each Party for joint verification referred to in paragraph 16 of Article 8.5;
(vii) discharging such other functions as provided for in this Chapter; and
(viii) where appropriate, develop a work programme and mechanisms for co-operation in the areas of technical issues of mutual interest; and

(b) determine its own operational procedures.

6. In case a problem is not resolved through the TBT Joint Committee, the Parties shall have final recourse to dispute settlement under Chapter 20 (Dispute Settlement).

7. The TBT Joint Committee may, where necessary, establish ad hoc groups to undertake specific tasks relating to this Chapter.

8. Any decision made by the TBT Joint Committee shall be notified promptly in writing to each Party.

9. Each Party shall, as applicable, bring into effect the relevant decisions of the TBT Joint Committee.

Article 8.8 : Preservation of Regulatory Authority
1. Each Party retains all authority under its laws to interpret and implement its mandatory requirements.

2. This Chapter shall not:
(a) prevent a Party from adopting or maintaining, in accordance with its international rights and obligations, mandatory requirements, as appropriate to its particular national circumstances;

(b) prevent a Party from adopting mandatory requirements to determine the level of protection it considers necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfil other legitimate objectives, at the levels it considers appropriate;

(c) limit the authority of a Party to take all appropriate measures whenever it ascertains that products may not conform to its mandatory requirements. Such measures may include withdrawing the products from the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, initiating legal proceedings or otherwise preventing the recurrence of such problems including through a prohibition on imports. If a Party takes such measures, it shall notify the other Party and the TBT Joint Committee, within fifteen (15) days of taking the measures, giving its reasons;

(d) oblige a Party to accept the standards or technical regulations or mandatory requirements of the other Party;

(e) entail an obligation upon a Party to accept the results of the conformity assessment procedures and/or assessment of manufacturers or manufacturing processes of products and their mandatory requirements of any third country save where there is an expressed agreement between the Parties to do so; and

(f) be construed so as to affect the rights and obligations of either Party as a member of the WTO TBT Agreement.

ARTICLE 8.9 : TERRITORIAL APPLICATION
This Chapter shall apply to the territory of Korea and to the territory of Singapore.

Article 8.10 : Language
1. Written communication between the Parties including between the TBT Joint Committee's co-chairs shall be in English.

2. A Party shall make every endeavour to provide, in English and in a timely manner, information on mandatory requirements and other information or documents such as certificates, documentary evidence etc., necessary for the implementation of this Chapter and its Sectoral Annex(es).

3. The TBT Joint Committee meetings shall be conducted in English.

4. The decisions and records of the TBT Joint Committee shall be drawn up in English.

Article 8.11 : Sectoral Annexes
1. The Parties shall conclude, as appropriate, Sectoral Annexes which shall provide the implementing arrangements for this Chapter.

2. The Parties shall:

(a) specify and communicate to each other the applicable articles or annexes contained in the mandatory requirements set out in the Sectoral Annexes;

(b) exchange information concerning the implementation of the mandatory requirements specified in the Sectoral Annexes;

(c) notify each other of any scheduled changes in its mandatory requirements whenever they are made; and

(d) notify each other of any scheduled changes concerning their Designating Authorities and the registered CABs.

3. A Sectoral Annex shall enter into force on the first day of the second month following the date on which the Parties have exchange notes confirming the completion of their respective (domestic legal) procedures for the entry into force of that Sectoral Annex.

4. A Party may terminate a Sectoral Annex in its entirety by giving the other Party six (6) months' advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment for the duration of the six-month notice period.

5. Where urgent problems of safety, health, consumer or environment protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such a case, the Party shall immediately advise the other Party of the nature of the urgent problem, the products covered and the objective and rationale of the suspension.

6. If a Party introduces new or additional conformity assessment procedures with the same product coverage to satisfy the requirements set out in the mandatory requirements specified in the Sectoral Annex, the Sectoral Annex shall be amended to set out the applicable laws, regulations and administrative provisions stipulating such new or additional conformity assessment procedures.

7. In case of conflict between the provisions of a Sectoral Annex and this Chapter, the provisions of the Sectoral Annex shall prevail.

CHAPTER 7 SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 7.1 : SANITARY AND PHYTOSANITARY MEASURES

1. The Parties shall not apply their sanitary and phytosanitary measures in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

2. The Parties shall ensure that any sanitary and phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence.

3. The principles set out in paragraphs 1 and 2 shall be applied in accordance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures which is hereby incorporated into and made part of this Agreement.

4. To provide a means of consultation and exchange of information between the Parties on sanitary and phytosanitary matters and enable the response to queries from one Party to the other within a reasonable time, the Parties shall maintain and communicate through the following contact points7-1:

(a) for Korea, the Ministry of Agriculture and Forestry; and

(b) for Singapore, Agri-Food and Veterinary Authority.

7-1 The communications and essential information exchanged between the Parties shall be in the English language. Particulars relating to the contact points shall be exchanged at the earliest possible, after the entry into force of this Agreement. The Parties understand that the communications between the Parties can be made via fax, e-mail or any other means agreed to by the Parties.

CHAPTER 17 INTELLECTUAL PROPERTY RIGHTS

ARTICLE 17.1 : DEFINITION
For the purposes of this Chapter:
intellectual property rights refer to copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits and rights in undisclosed information;

TRIPS Agreement means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights;

PCT means the Patent Cooperation Treaty administered by the World Intellectual Property Organization;

ISA and IPEA means the International Searching Authority and the International Preliminary Examining Authority, respectively, under the PCT;

IPOS means the Intellectual Property Office of Singapore; and

KIPO means the Korean Intellectual Property Office.

ARTICLE 17.2 : GENERAL OBLIGATIONS
Each Party re-affirms its obligations under the TRIPS Agreement, and, in accordance with the TRIPS Agreement, shall provide adequate and effective protection of intellectual property rights to the nationals of the other Party in its territory.

ARTICLE 17.3 : ENFORCEMENT
The Parties shall, consistent with the TRIPS Agreement, provide for the enforcement of intellectual property rights in their respective laws.

ARTICLE 17.4 : MORE EXTENSIVE PROTECTION
Each Party may implement in its domestic laws more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement and the TRIPS Agreement.

ARTICLE 17.5 : CO-OPERATION IN THE FIELD OF INTELLECTUAL PROPERTY
1. The Parties, recognising the growing importance of intellectual property rights as a factor of social, economic and cultural development, shall enhance their co-operation in the field of intellectual property.

2. The Parties, pursuant to paragraph 1, may co-operate in the following areas:

(a) international search and international preliminary examination under PCT and facilitation of international patenting process;

(b) promotion of mutual understanding of the other Party's intellectual property policies, activities, and experiences thereof;

(c) promotion of education and awareness of intellectual property;

(d) patent technology, licensing, and market intelligence; and

(e) plant variety protection including exchange of technical expertise and knowledge.

ARTICLE 17.6 : DESIGNATION OF KIPO AS AN ISA AND IPEA UNDER PCT

1. Singapore shall designate KIPO as an ISA and IPEA under the PCT for international applications received by IPOS insofar as these applications are submitted in the English language.

2. Within three (3) months from the date of the signature of this Agreement, KIPO and IPOS shall conclude a Working Agreement for the detailed procedures in relation to the designation of KIPO as an ISA and IPEA as mentioned in paragraph 1.

ARTICLE 17.7 : FACILITATION OF PATENTING PROCESS

Singapore shall designate KIPO as a prescribed patent office in accordance with the Patents Act (Cap. 221) of Singapore and the regulations made thereunder for the purpose of facilitating the patent process of a patent application filed in Singapore that corresponds to a patent application filed in Korea, where the applicant for that patent application filed in Singapore provides IPOS with the necessary information, documents and translation on that corresponding application filed in Korea, as required by the Patents Act and the regulations thereunder.

ARTICLE 17.8 : PROMOTION OF EDUCATION AND AWARENESS OF INTELLECTUAL PROPERTY

The Parties may jointly undertake education, workshops, and fairs in the field of intellectual property for the purposes of contributing to a better understanding of each other's intellectual property policies and experiences.

ARTICLE 17.9 : JOINT COMMITTEE ON INTELLECTUAL PROPERTY

1. For the purpose of effective implementation of this Chapter, a Joint Committee on Intellectual Property (“the IP Joint Committee”) shall be established. The functions of the IP Joint Committee may include:

(a) overseeing and reviewing the Parties' co-operation under this Chapter;

(b) providing advice with regard to the Parties' co-operation under this Chapter;

(c) considering and recommending new areas of co-operation on matters covered by this Chapter; and

(d) discussing other issues related to intellectual property.

2. The IP Joint Committee shall be co-chaired by senior officials from both KIPO and IPOS. The composition of the IP Joint Committee shall be decided in consultation with the co-chairs, subject to mutual agreement between the Parties. The IP Joint Committee may meet at the same time as when the Parties meet for the review under Article 22.1.

CHAPTER 3 NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 3.1 : DEFINITIONS

For the purposes of this Chapter:

other duties or charges means any duty or charge of any kind, except customs duty, imposed on or in connection with the importation of goods of the other Party, but does not include any:

(a) duty imposed pursuant to Chapter 6 (Trade Remedies);

(b) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

(c) fee or other charge in connection with importation commensurate with the cost of services rendered;

(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; or

(e) duty imposed pursuant to Article 5 of the WTO Agreement on Agriculture.

ARTICLE 3.2 : SCOPE AND COVERAGE

This Chapter shall be applied to the trade in goods between the Parties.

ARTICLE 3.3 : NATIONAL TREATMENT

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 is incorporated into and made part of this Agreement.

ARTICLE 3.4 : TARIFF ELIMINATION

1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties and other duties or charges on originating goods of the other Party in accordance with its Tariff Elimination Schedule set out in Annex 3A.

2. Upon request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties as set out in their Tariff Elimination Schedules or incorporating into one Party's Tariff Elimination Schedule goods that are not subject to the Tariff Elimination Schedule. An agreement by the Parties to accelerate the elimination of customs duties on an originating good or to include a good in the Tariff Elimination Schedule shall supersede any duty rate or staging category determined pursuant to their Tariff Elimination Schedules for such good, shall be treated as an amendment to Annex 3A and shall enter into force in accordance with the procedure under Article 22.4.

ARTICLE 3.5 : CUSTOMS VALUATION

The Parties shall apply Article VII of GATT 1994 and the provisions of Part I of the Customs Valuation Agreement for the purposes of determining the customs value of goods traded between the Parties.

ARTICLE 3.6 : EXPORT DUTY

Neither Party shall adopt or maintain any duties on goods exported from its territory into the territory of the other Party.

ARTICLE 3.7 : GOODS RE-ENTERED AFTER REPAIR OR PROCESS

In accordance with its domestic laws and regulations, each Party may exempt or reduce a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported or if it was under a temporary exit from its territory to the territory of the other Party for repair or process, regardless of whether such repair or process could be performed in its territory.

ARTICLE 3.8 : IMPORT AND EXPORT RESTRICTIONS

1. Neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with rights and obligations under the WTO Agreement, or except as otherwise provided in this Agreement.

2. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, nothing in this Agreement shall be construed to prevent the Party from limiting or prohibiting the importation from the territory of the other Party of such a good of that non-Party.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, upon request of the other Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.

ARTICLE 3.9 : CUSTOMS USER FEES

Customs user fees shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes. They shall be based on specific rates that correspond to the real value of the service rendered.

ARTICLE 3.10 BALANCE OF PAYMENT EXCEPTION

1. Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures. The relevant provisions of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994 are hereby incorporated into and made part of the Agreement. 2. The Party introducing a measure under this Article shall promptly notify the other Party.

CHAPTER 12 FINANCIAL SERVICES

ARTICLE 12.1 : SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) trade in financial services.

2. Chapters 9 (Cross-Border Trade in Services) and 10 (Investment) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter. For this purpose:

(a) Articles 9.12, 9.15, 10.11, 10.12, 10.13, 10.16, 10.17 and 10.18 are hereby incorporated into and made a part of this Chapter;

(b) As for Articles 9.16 and 10.12, in the event of any inconsistency between Chapter 9(Cross-Border Trade in Services) and Chapter 10 (Investment) in this Agreement, Chapter 10 shall prevail to the extent of the inconsistency; and

(c) Section C of Chapter 10 (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 10.11, 10.13, 10.16 and 10.17, as incorporated into this Chapter.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities or services forming part of a public retirement plan or statutory system of social security; or

(c) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a), (b) or (c) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter does not apply to laws, regulations or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

ARTICLE 12.2 : NATIONAL TREATMENT

1. In the sectors inscribed in its Schedule in Annex 12A, and subject to any conditions and qualifications set out therein, each Party shall accord to financial services and financial service suppliers of the other Party, in like circumstance, in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers.

2. In the sectors inscribed in its Schedule in Annex 12A, and subject to any conditions and qualifications set out therein, each Party shall accord to the investors of the other Party, in like circumstances, in respect of the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments in financial institutions in its territory, treatment no less favourable than that it accords to its own like investors.

3. In the sectors inscribed in its Schedule in Annex 12A, and subject to any conditions and qualifications set out therein, each Party shall accord to the financial institutions of the other Party and to investments of investors of the other Party in financial institutions, in like circumstances, in respect of establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments, treatment no less favourable than that it accords to its own like financial institutions, and to investments of its own like investors in financial institutions.

4. A Party may meet the requirement of paragraphs 1, 2 and 3 by according to financial services and financial service suppliers of the other Party, investors of the other Party, financial institutions of the other Party and to investments of investors of the other Party in financial institutions, as the case may be, in like circumstance, either formally identical treatment or formally different treatment to that it accords to its own like financial services and financial service suppliers, its own like investors, its own like financial institutions and investments of its own like investors in financial institutions, respectively.

5. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of financial services and financial service suppliers of a Party, investors of a Party, financial institutions of a Party and to investments of investors of a Party in financial institutions compared to like financial services or financial service suppliers of the other Party, like investors of the other Party, like financial institutions of the other Party and investments of like investors of the other Party in financial institutions in like circumstance.

ARTICLE 12.3 : MARKET ACCESS

1. With respect to market access through the modes of supply identified in the definition of trade in financial services in Article 12.15, each Party shall accord financial services and financial service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule in Annex 12A.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule in Annex 12A, are defined as:

(a) limitations on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service providers or the requirements of an economic needs test;

(b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service; and (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 12.4 : SCHEDULE OF SPECIFIC COMMITMENTS

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 12.2 and 12.3. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;
(b) conditions and qualifications on national treatment;
(c) undertakings relating to additional commitments;
(d) where appropriate, the time-frame for implementation of such commitments.

2. Measures inconsistent with both Articles 12.2 and 12.3 shall be inscribed in the column relating to Article 12.3. In this case the inscription will be considered to provide a condition or qualification to Article 12.2 as well.

3. Schedules of specific commitments shall be annexed to this Agreement as Annex12A and shall form an integral part thereof.

ARTICLE 12.5 : TRANSPARENCY

1. Each Party commits to promote regulatory transparency in financial services. Accordingly, the Parties shall consult with the goal of promoting objective and transparent regulatory processes in each Party, taking into account

(a) the work undertaken by the Parties in GATS and the Parties' work in other fora relating to trade in financial services; and

(b) the importance of regulatory transparency of identifiable policy objectives and clear and consistently applied regulatory processes that are communicated or otherwise made available to the public.

2. Each Party shall publish promptly and, except in emergency situations, at latest by the time of their entry into force, all relevant regulatory measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in financial services to which a Party is a signatory shall also be published.

3. Where publication as referred to paragraph 2 is not practicable, such information shall be made otherwise publicly available.

4. Each Party shall respond promptly to all requests by the other Party for specific information of its regulatory measures of general application or international agreements within the meaning of paragraph 2. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

ARTICLE 12.6 : EXCEPTIONS

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of a Party's financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters 10 (Investment), 11 (Telecommunications), or 14 (Electronic Commerce) applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9.15, 10.7 or 10.11.

3. Notwithstanding Articles 9.15 and 10.11, as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or financial service supplier to, or for the benefit of, an affiliate of or a person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

ARTICLE 12.7 : DOMESTIC REGULATION

In sectors where specific commitments are undertaken in its schedule to Annex 12A each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

ARTICLE 12.8 : TREATMENT OF CERTAIN INFORMATION

Nothing in this Chapter shall require a Party to furnish confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 12.9 : RECOGNITION

1. A Party may recognise the prudential measures of any international regulatory body or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international regulatory body or non-Party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

ARTICLE 12.10 : FINANCIAL SERVICES COMMITTEE

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services.

2. The Financial Services Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;
(b) consider issues regarding financial services that are referred to it by a Party; and
(c) participate in the dispute settlement procedures in accordance with Article 12.12.

3. The Financial Services Committee shall meet one year after this Agreement has entered into force and thereafter as otherwise agreed by both Parties, to assess the functioning of this Agreement as it applies to financial services.

ARTICLE 12.11 : CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Financial Services Committee.

2. Consultation under this Article shall include officials of the authority responsible for financial services.

ARTICLE 12.12 : DISPUTE SETTLEMENT

1. Relevant Articles in Chapter 20 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. For the purposes of this Article, consultations held pursuant to Article 12.11 shall be deemed to be consultations within the meaning of Article 20.4.

3. When a Party claims that a dispute arises under this Chapter, Article 20.7 shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 4;

(b) in any other case,

(i) each Party may select panelists meeting the qualifications set out in paragraph 4 or paragraph 4 of Article 20.7 ; and
(ii) if the Party complained against invokes Article 12.6, the chair of panel shall meet the qualifications set out in paragraph 4, unless the parties agree otherwise.

4. Financial services panelists shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and

(c) meet the qualifications set out in paragraph 4 and paragraph 4 of Article 20.7.

5. Notwithstanding Article 20.14, where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

ARTICLE 12.13 : INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim under Section C in Chapter 10 (Investment) against the other Party and the respondent invokes Article 10.12 or 12.6, on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Financial Services Committee shall decide the issue of whether and to what extent Article 10.12 or 12.6 is a valid defence to the claim of the investor. The Financial Services Committee shall transmit a copy of its decision to the tribunal. The decision shall be binding on the tribunal.

3. Where the Financial Services Committee has not decided the issue within sixty (60) days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of a panel under relevant Articles in Chapter 20 (Dispute Settlement). The panel shall be constituted in accordance with Article 12.12. The panel shall transmit its final report to the Financial Services Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within ten (10) days of the expiration of the 60-day period referred to in paragraph 3, a tribunal may proceed to decide the matter.

5. For the purposes of this Article, tribunal means a tribunal established pursuant to Article 10.19.

ARTICLE 12.14 : MODIFICATION OF SCHEDULES
The Parties shall, on the request in writing by either Party, hold consultations to consider any modification or withdrawal of a commitment in the Schedule of specific commitments on trade in financial services. Such consultations shall be held within three months after the requesting Party makes such a request. In such consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments not less favourable to trade than that provided for in the Schedule of specific commitments in Annex 12A prior to such consultations is maintained.

ARTICLE 12.15 : DEFINITIONS
For the purposes of this Chapter:

trade in financial services means the supply of a financial service:
(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to the financial service consumer of the other Party;

(c) by a financial service supplier of a Party, through commercial presence in the territory of the other Party;

(d) by a financial service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party;

commercial presence means any type of business or professional establishment,
including through:

(a) the constitution, acquisition or maintenance of a juridical person; or
(b) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

financial institution means any financial intermediary or other institution, that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature. Financial services shall include the activities as stated in Annex 12B;

financial service consumer means any person that receives or uses a financial service;

financial service supplier of a Party means any natural or juridical person authorized by the law of a Party that is engaged in the business of supplying financial services through the trade in financial services.

investment means “investment” as defined in Chapter 10 (Investment), except that, with respect to “loans” and “debt instruments” referred to in that Chapter:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

investor of a Party means a Party or state enterprise thereof, or a person of that Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;

juridical person means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association, or a branch of a financial institution constituted or otherwise organised under the law of a non-Party that is registered or set up in the territory of a Party and carrying out business activities there;

juridical person of the other Party means a juridical person which is either:

(a) constituted or otherwise organised under the law of the other Party and, for greater certainty, includes a branch of a financial institution of a non-Party; and is engaged in substantive business operations in the territory of the other Party; or

(b) in the case of the supply of a service through commercial presence, owned or controlled by:
(i) natural persons of the other Party; or
(ii) juridical persons of the other Party identified under subparagraph (a);

natural person of a Party means a natural person who resides in the territory of the Party or elsewhere and who under the law of that Party:

(a) is a national of that Party; or
(b) has the right of permanent residence in that Party;

person of a Party means either a natural person or a juridical person; public entity means:

(a) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; for greater certainty, a public entity shall not be considered a designated monopoly or a public enterprise for purposes of Chapter 15 (Competition); or

(b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;

authority responsible for financial services means:
(a) for Korea, the Ministry of Finance and Economy; and
(b) for Singapore, the Monetary Authority of Singapore.

CHAPTER 11 TELECOMMUNICATIONS

ARTICLE 11.1: DEFINITIONS

For the purposes of this Chapter:

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier but excluding a supplier of public telecommunications transport network or services;

essential facilities means facilities of a public telecommunications transport network or service that:
(a) are exclusively or predominantly provided by a single or limited number of suppliers; and
(b) cannot feasibly be economically or technically substituted in order to provide a service;

facilities-based suppliers means suppliers of public telecommunications transport networks or services that are:
(a) for Korea, telecommunications carriers provided for in Article 5 of the Telecommunications Business Act; and
(b) for Singapore, Facilities-Based Operators;

major supplier means a supplier of basic telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport network or services as a result of:
(a) control over essential facilities; or
(b) use of its position in the market;

network element means a facility or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facility or equipment;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

number portability means the ability of end-users of public telecommunications transport network or services to retain existing telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications transport network or services;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport network or services means public telecommunications transport network and/or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

service supplier means any person that supplies a service;

telecommunications means the transmission and reception of signals by any electromagnetic means; and

user means service consumers and service suppliers.

ARTICLE 11.2: SCOPE AND COVERAGE3

1. This Chapter shall apply to measures adopted or maintained by a Party that affect access to and use of, and the regulation of public telecommunications transport networks and services.

2. This Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or services; or
(b) require a Party (or require a Party to compel any service supplier) to establish, construct, acquire, lease, operate or provide telecommunications transport networks or services not offered to the public generally.

ARTICLE 11.3: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network and service, including private leased circuits, offered in its territory or across its borders on reasonable, nondiscriminatory, timely and transparent terms and conditions, including as those set out in paragraphs 2, 3, 4, 5 and 6.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect leased or owned circuits with public telecommunications transport networks and services in the territory, of that Party, or with circuits leased or owned by another service supplier;

(c) perform switching, signaling and processing functions;

(d) use operating protocols of their choice, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally; and

(e) provide services to individual or multiple end-users over any leased or owned circuit(s) to the extent that the scope and type of such services are not inconsistent with each Party's domestic laws and regulations.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of the other Party.

[3] 11-1 The obligations of a Party in this Chapter shall be applied in a non-discriminatory manner to suppliers of public telecommunications transport network or services of both Parties.

4. Notwithstanding the preceding paragraph, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, or to protect the privacy of personal data of end-users, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services, other than that necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks and services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(b) requirements, where necessary, for the inter-operability of such services;

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; or

(d) notification, registration and licensing.

ARTICLE 11.4 : CONDUCT OF MAJOR SUPPLIERS

Treatment by Major Suppliers

1. Each Party shall ensure that any major supplier in its territory accords facilities based suppliers, licensed in its territory, of the other Party treatment no less favourable than such major supplier accords to itself, its subsidiaries, its affiliates, or any nonaffiliated service supplier, provided they are facilities-based suppliers, regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications transport network or services; and

(b) the availability of technical interfaces necessary for interconnection. When necessary, a Party shall assess such treatment on the basis of whether such suppliers of public telecommunications transport network or services, subsidiaries, affiliates, and non-affiliated service suppliers are in like circumstances.

Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications transport network or services who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

TRANSPARENCY

Publication of Laws and Regulations (ch. 16)
Availability of Judicial Appeal of Agency Decisions (16-03)
Internet Availability of Laws and Regulations (16-06)

Tratado de Libre Comercio entre
el Gobierno de la República de Chile y
el Gobierno de los Estados Unidos Mexicanos

SEXTA PARTE - DISPOSICIONES INSTITUCIONALES ADMINISTRATIVAS
Capítulo 16: Transparencia

Artículo 16-01: Definiciones
Para efectos de este capítulo, se entenderá por resolución administrativa de aplicación general, una resolución o interpretación administrativa que se aplica a todas las personas y situaciones de hecho que generalmente entren en su ámbito, y que establece una norma de conducta, pero no incluye:
resoluciones o fallos en procedimientos administrativos que se aplican a una persona, bien o servicio en particular de la otra Parte en un caso específico; o un fallo que resuelva respecto de un acto o práctica en particular.

Artículo 16-02: Centro de información
Cada Parte designará una dependencia u oficina como centro de información para facilitar la comunicación entre las Partes sobre cualquier asunto comprendido en este Tratado.
Cuando una Parte lo solicite, el centro de información de la otra Parte indicará la dependencia o el funcionario responsable del asunto y prestará el apoyo que se requiera para facilitar la comunicación con la Parte solicitante.

Artículo 16-03: Publicación
Cada Parte se asegurará de que sus leyes, reglamentos, procedimientos y resoluciones administrativas de aplicación general que se refieran a cualquier asunto comprendido en este Tratado se publiquen a la brevedad o se pongan a disposición para conocimiento de la otra Parte y de cualquier interesado.
En la medida de lo posible, cada Parte:
publicará por adelantado cualquier medida que se proponga adoptar; y
brindará a las personas y a la otra Parte oportunidad razonable para formular observaciones sobre las medidas propuestas.

Artículo 16-04: Notificación y suministro de información
Cada Parte notificará a la otra Parte, en la medida de lo posible, toda medida vigente o en proyecto que considere que pudiera afectar o afecte sustancialmente los intereses de la otra Parte en los términos de este Tratado.
Cada Parte, a solicitud de la otra Parte, proporcionará información y dará respuesta pronta a sus preguntas relativas a cualquier medida vigente o en proyecto, sin perjuicio que se le haya notificado previamente sobre esa medida.
La notificación o suministro de información a que se refiere este artículo se realizará sin que ello prejuzgue si la medida es o no compatible con este Tratado.

Artículo 16-05: Procedimientos administrativos
Con el fin de administrar en forma compatible, imparcial y razonable todas las medidas de aplicación general que afecten los aspectos que cubre este Tratado, cada Parte se asegurará de que, en sus procedimientos administrativos en que se apliquen las medidas mencionadas en el artículo 16-03 respecto a personas, bienes o servicios en particular de la otra Parte en casos específicos:

siempre que sea posible, las personas de la otra Parte que se vean directamente afectadas por un procedimiento, reciban conforme a las disposiciones internas, aviso razonable del inicio del mismo, incluidas una descripción de su naturaleza, la declaración de la autoridad a la que legalmente le corresponda iniciarlo y una descripción general de todas las cuestiones controvertidas;
cuando el tiempo, la naturaleza del procedimiento y el interés público lo permitan, dichas personas reciban una oportunidad razonable para presentar hechos y argumentos en apoyo de sus pretensiones, previamente a cualquier acción administrativa definitiva; y
sus procedimientos se ajusten a la legislación de esa Parte.

Artículo 16-06: Revisión e impugnación
Cada Parte establecerá y mantendrá tribunales o procedimientos judiciales o de naturaleza administrativa para efectos de la pronta revisión y, cuando se justifique, la corrección de las acciones administrativas definitivas relacionadas con los asuntos comprendidos en este Tratado. Estos tribunales serán imparciales y no estarán vinculados con la dependencia ni con la autoridad encargada de la aplicación administrativa de la ley, y no tendrán interés sustancial en el resultado del asunto.
Cada Parte se asegurará de que, ante dichos tribunales o en esos procedimientos, las partes tengan derecho a:
una oportunidad razonable para apoyar o defender sus respectivas posturas; y
una resolución fundada en las pruebas y presentaciones o, en casos donde lo requiera su legislación, en el expediente compilado por la autoridad administrativa.
Cada Parte se asegurará de que, con apego a los medios de impugnación o revisión ulterior a que se pudiese acudir de conformidad con su legislación, dichas resoluciones sean implementadas por las dependencias o autoridades.

CUSTOMS PROCEDURES/TRADE FACILITATION

NOT ADDRESSED

TECHNICAL STANDARDS

Electronic Products Standards Requirements

Tratado de Libre Comercio entre
el Gobierno de la República de Chile y
el Gobierno de los Estados Unidos Mexicanos
TERCERA PARTE - NORMAS TECNICAS
Capítulo 8: Medidas relativas a la normalización

Artículo 8-01: Definiciones
Para efectos de este capitulo, se entenderá por:
Acuerdo OTC: el Acuerdo sobre Obstáculos Técnicos al Comercio, que forma parte del Acuerdo sobre la OMC;
evaluación de riesgo: la evaluación de la posibilidad de que haya efectos adversos;
hacer compatible: llevar las medidas relativas a la normalización diferentes, aprobadas por distintos organismos de normalización, pero con un mismo alcance, a un nivel tal que sean idénticas, equivalentes o tengan el efecto de permitir que los bienes o servicios se utilicen indistintamente o para el mismo propósito;
medidas relativas a la normalización: una norma, un reglamento técnico o un procedimiento de evaluación de la conformidad;
norma: un documento aprobado por una institución reconocida, que prevé, para un uso común y repetido, reglas, directrices o características para los bienes o los procesos y métodos de producción conexos o para servicios o métodos de operación conexos, y cuya observancia no es obligatoria. También puede incluir prescripciones en materia de

terminología, símbolos, embalaje, marcado o etiquetado aplicables a un bien, proceso o método de producción u operación, o tratar exclusivamente de ellas;
norma internacional: una medida relativa a la normalización, u otro lineamiento o recomendación, adoptada por un organismo internacional de normalización y puesta a disposición del público;
objetivo legítimo: entre otros, la garantía de la seguridad o la protección de la vida o la salud humana, animal, vegetal o del ambiente, o la prevención de las prácticas que puedan inducir a error a los consumidores, incluyendo asuntos relativos a la identificación de bienes o servicios, considerando entre otros aspectos, cuando corresponda, factores fundamentales de tipo climático, geográfico, tecnológico, de infraestructura o justificación científica;
organismos de normalización: un organismo cuyas actividades de normalización son reconocidas;
organismos internacionales de normalización: un organismo de normalización abierto a la participación de los organismos pertinentes de al menos todos los Miembros del Acuerdo OTC, incluidas la Organización Internacional de Normalización, la Comisión Electrotécnica Internacional, la Comisión del Codex Alimentarius, la Organización Mundial de la Salud, la Organización de Naciones Unidas para la Agricultura y la Alimentación, la Unión Internacional de Telecomunicaciones, o cualquier otro organismo que las Partes designen;
procedimiento de autorización: el registro, notificación o cualquier otro procedimiento administrativo obligatorio para el otorgamiento de un permiso con el fin de que un bien o servicio sea producido, comercializado o utilizado para fines definidos o conforme a condiciones establecidas;
procedimiento de evaluación de la conformidad: todo procedimiento utilizado, directa o indirectamente, para determinar que se cumplen las prescripciones pertinentes de los reglamentos técnicos o normas y comprenden, entre otros, procedimientos de muestreo, prueba e inspección, evaluación, verificación y garantía de la conformidad, registro, acreditación y aprobación, separadamente o en distintas combinaciones;
reglamento técnico: un documento en el que se establecen las características de los bienes o sus procesos y métodos de producción conexos, o las características de los servicios o sus métodos de operación conexos, incluidas las disposiciones administrativas aplicables, y cuya observancia es obligatoria. También puede incluir prescripciones en materia de terminología, símbolos, embalaje, marcado o etiquetado aplicables a un bien, proceso o método de producción u operación, o tratar exclusivamente de ellas; y
servicios: cualquiera de los sectores o subsectores de servicios transfronterizos establecidos en el anexo 8-01.

Artículo 8-02: Disposición general
Además de lo dispuesto en el Acuerdo OTC, las Partes aplicarán las disposiciones de este capítulo.

Artículo 8-03: Ámbito de aplicación
Este capítulo se aplica a las medidas relativas a la normalización de las Partes, así como a las medidas relacionadas con ellas, que puedan afectar, directa o indirectamente, el comercio de bienes o servicios entre las mismas.
Las disposiciones de este capítulo no son aplicables a las medidas sanitarias y fitosanitarias que se regirán por el capítulo 7 (Medidas sanitarias y fitosanitarias).

Artículo 8-04: Derechos básicos y obligaciones
Cada Parte podrá fijar el nivel de protección que considere apropiado para lograr sus objetivos legítimos y, asimismo, podrá elaborar, adoptar, aplicar y mantener las medidas relativas a la normalización que permitan garantizar el logro de sus objetivos legítimos, así como las medidas que garanticen la aplicación y cumplimiento de esas medidas de normalización, incluyendo los procedimientos de autorización.
Cada Parte cumplirá con las disposiciones de este capítulo y adoptará las medidas necesarias para garantizar su cumplimiento, así como las medidas en ese sentido que estén a su alcance respecto de los organismos no gubernamentales de normalización debidamente acreditados en su territorio.
Con relación a las normas y los reglamentos técnicos, cada Parte otorgará a los bienes y proveedores de servicios de la otra Parte, trato nacional y trato no menos favorable que el otorgado a bienes similares y a proveedores de servicios similares de cualquier otro país no Parte.

Ninguna Parte podrá elaborar, adoptar, mantener o aplicar medidas relativas a la normalización que tengan por objeto o efecto crear obstáculos innecesarios al comercio entre las Partes. Para tal fin, las medidas relativas a la normalización no restringirán el comercio más de lo necesario para alcanzar un objetivo legítimo, teniendo en cuenta los riesgos que crearía no alcanzarlo. Se presumirá que una medida no crea obstáculos innecesarios al comercio cuando:
la finalidad demostrable de la medida sea lograr un objetivo legítimo;
esté de conformidad con una norma internacional; y
la medida no funcione de manera que excluya bienes de la otra Parte que cumplan con ese objetivo legítimo.
Cada Parte utilizará como base para sus propias medidas relativas a la normalización, las normas internacionales vigentes o de adopción inminente, excepto cuando esas normas no constituyan un medio eficaz o adecuado para lograr sus objetivos legítimos.

Artículo 8-05: Compatibilidad
Reconociendo el papel central que las medidas relativas a la normalización desempeñan en la consecución de los objetivos legítimos, las Partes trabajarán de manera conjunta, de conformidad con este capítulo y con el Acuerdo OTC, para fortalecer el nivel de seguridad y de protección de la vida o la salud humana, animal o vegetal, del ambiente y de los consumidores.
Las Partes trabajarán para hacer compatible, en el mayor grado posible, sus respectivas medidas relativas a la normalización, sin reducir el nivel de seguridad o de protección de la vida o la salud humana, animal o vegetal, del ambiente o de los consumidores, sin perjuicio de los derechos que confiera este capítulo a cualquiera de las Partes y tomando en cuenta las actividades internacionales de normalización, con el fin de facilitar el comercio de un bien o servicio entre las mismas.
A petición de una Parte, la otra Parte procurará, en la medida posible y mediante los medios apropiados, promover la compatibilidad de una medida relativa a la normalización específica que exista en su territorio, con las medidas relativas a la normalización que existan en territorio de la otra Parte.
A solicitud expresa y por escrito de una Parte, donde fundamente sus razones, la otra Parte considerará favorablemente la posibilidad de aceptar como equivalentes reglamentos técnicos de esa Parte, aun cuando difieran de los suyos, siempre que, en cooperación con esa Parte, tenga la convicción de que esos reglamentos cumplen adecuadamente los objetivos legítimos de sus propios reglamentos.
A solicitud de una Parte, la otra Parte le comunicará por escrito las razones para no aceptar un reglamento técnico como equivalente.

Artículo 8-06: Evaluación de riesgo
En la búsqueda de sus objetivos legítimos, cada Parte llevará a cabo evaluaciones de riesgo. Al realizar dicha evaluación, una Parte podrá tomar en cuenta, entre otros factores relacionados con un bien o servicio:
las evaluaciones de riesgo efectuadas por organismos internacionales de normalización;
la evidencia científica o la información técnica disponibles;
el uso final previsto;
los procesos o métodos de producción, siempre que estos influyan en las características de los bienes o servicios finales;
los procesos o métodos de operación, de inspección, de muestreo o de pruebas; o
las condiciones ambientales.
Cuando una Parte establezca un nivel de protección que considere apropiado para lograr sus objetivos legítimos y efectúe una evaluación de riesgo, deberá evitar distinciones arbitrarias o injustificables entre los bienes o proveedores de servicios similares en el nivel de protección que considere apropiado, si tales distinciones:
tienen por efecto una discriminación arbitraria o injustificable contra bienes o proveedores de servicios de la otra Parte;
constituyen una restricción encubierta al comercio entre las Partes; o
discriminan entre bienes o servicios similares para el mismo uso de conformidad con las mismas condiciones, que planteen el mismo nivel de riesgo y que otorguen beneficios similares.

Cuando la Parte que lleve a cabo una evaluación de riesgo determine que la evidencia científica u otra información disponible es insuficiente para completar la evaluación, podrá adoptar un reglamento técnico de manera provisional, fundamentado en la información pertinente disponible y de conformidad con lo establecido en el Acuerdo OTC. Una vez que se le haya presentado la información suficiente para completar la evaluación de riesgo, y dentro de un plazo razonable, esa Parte concluirá su evaluación, revisará y, cuando proceda, modificará el reglamento técnico provisional a la luz de dicha evaluación.
Una Parte proporcionará a la otra Parte, cuando así lo solicite, la documentación pertinente con relación a sus procesos de evaluación de riesgo, los factores que tome en consideración para llevar a cabo la evaluación y para el establecimiento de los niveles de protección que considere adecuados, de conformidad con el Artículo 8-04.

Artículo 8-07: Procedimientos de evaluación de la conformidad

Los procedimientos de evaluación de la conformidad de las Partes se elaborarán, adoptarán y aplicarán de manera que se conceda acceso a los bienes o proveedores de servicios similares del territorio de la otra Parte en condiciones no menos favorables que las otorgadas a los bienes o proveedores de servicios similares de la Parte o de un país no Parte en una situación comparable.

En relación con sus procedimientos de evaluación de la conformidad, cada Parte se asegurará de que:
dichos procedimientos se inicien y concluyan con la mayor rapidez posible y en un orden no discriminatorio;
se publique la duración normal de cada uno de estos procedimientos o, previa petición, se comunique al solicitante la duración aproximada del trámite previsto;

el organismo o autoridad competente examine prontamente, cuando reciba una solicitud, si la documentación está completa y comunique al solicitante todas las deficiencias de manera precisa y completa; transmita al solicitante lo antes posible los resultados de la evaluación de una manera precisa y completa, de modo que puedan tomarse medidas correctivas si fuera necesario; incluso cuando la solicitud presente deficiencias, siga adelante con la evaluación de la conformidad hasta donde sea viable, si así lo pide el solicitante; y de que, previa petición, se informe al solicitante de la fase en que se encuentra el procedimiento, explicándole los eventuales retrasos;

sólo se exija la información necesaria para evaluar la conformidad y calcular los derechos;

el carácter confidencial de las informaciones referentes a un bien o servicio de la otra Parte, que resulte de tales procedimientos o que hayan sido facilitadas con motivo de ellos, se respete de la misma manera que en el caso de un bien o servicio de esa Parte, de manera que se protejan los intereses comerciales legítimos;

los derechos que eventualmente se impongan por evaluar la conformidad de un bien o servicio de la otra Parte sean equitativos en comparación con los que se percibirían por evaluar la conformidad de un bien o servicio de esa Parte, teniendo en cuenta los gastos de las comunicaciones, el transporte y otros gastos derivados de las diferencias de emplazamiento de las instalaciones del solicitante y las del organismo de evaluación de la conformidad;
el emplazamiento de las instalaciones utilizadas en los procedimientos de evaluación de la conformidad y los procedimientos de selección de muestras no causen molestias innecesarias a los solicitantes, o sus agentes;
siempre que se modifiquen las especificaciones de un bien o servicio tras haberse declarado su conformidad con los reglamentos técnicos o las normas aplicables, el procedimiento de evaluación de la conformidad del bien o servicio modificado se limite a lo necesario para determinar si existe la debida seguridad de que el bien o servicio sigue ajustándose a los reglamentos técnicos o a las normas aplicables; y exista un procedimiento para examinar las reclamaciones relativas a la aplicación de un procedimiento de evaluación de la conformidad y adoptar medidas correctivas cuando la reclamación esté justificada.

Una Parte, a solicitud de la otra Parte, con el fin de avanzar en la facilitación del comercio, considerará favorablemente, entablar negociaciones encaminadas a la conclusión de acuerdos de reconocimiento mutuo de los resultados de sus respectivos procedimientos de evaluación de la conformidad.

En la medida de lo posible, cada Parte aceptará los resultados de los procedimientos de evaluación de la conformidad que se lleven a cabo en el territorio de la otra Parte, siempre que ofrezcan una garantía satisfactoria, equivalente a la que brinden los procedimientos que la Parte aceptante lleve a cabo o que se realicen en su territorio y cuyo resultado acepte, de que el bien o servicio pertinente cumple con el reglamento técnico o con la norma aplicable adoptada o mantenida en territorio de esa Parte.
Previamente a la aceptación de los resultados de un procedimiento de evaluación de la conformidad, de acuerdo con lo dispuesto en el párrafo 4, y con el fin de fortalecer la confiabilidad sostenida de los resultados de la evaluación de la conformidad de cada una de ellas, las Partes podrán consultar sobre asuntos tales como la capacidad técnica de los organismos de evaluación de la conformidad en cuestión, inclusive sobre el cumplimiento verificado de las normas internacionales pertinentes a través de medios tales como la acreditación.
En reconocimiento de que ello debería redundar en beneficio mutuo de las Partes, cada Parte acreditará, aprobará o reconocerá de cualquier otra forma a los organismos de evaluación de la conformidad en el territorio de la otra Parte, en condiciones no menos favorables que las otorgadas a esos organismos en su territorio.

Artículo 8-08: Procedimientos de autorización
Cada Parte aplicará las disposiciones pertinentes del artículo 8-07(2), a sus procedimientos de autorización, con las modificaciones que se requieran.

Artículo 8-09: Notificación, publicación y transparencia
Al proponer la adopción o la modificación de algún reglamento técnico o algún procedimiento de evaluación de la conformidad aplicado a un reglamento técnico, excepto cuando se presenten las circunstancias urgentes establecidas en los Artículos 2.10 y 5.7 del Acuerdo OTC, cada Parte publicará un aviso y notificará por escrito a la otra Parte la medida propuesta por lo menos con 60 días de anticipación a la adopción o modificación de la medida, que no tenga carácter de ley, de modo que permita a las personas interesadas familiarizarse con ella.

Cuando un organismo de normalización de una Parte se proponga adoptar o modificar una norma o un procedimiento de evaluación de la conformidad aplicado a una norma, esa Parte publicará un aviso y notificará por escrito a la otra Parte la medida propuesta en una etapa convenientemente temprana, de modo que permita a las personas interesadas familiarizarse con ella.

Las Partes realizarán las notificaciones de los párrafos 1 y 2 conforme a los formatos establecidos en el Acuerdo OTC o a los que ambas Partes acuerden.

Cada Parte avisará anualmente a la otra Parte sobre sus planes y programas de normalización.
Cada Parte mantendrá un listado de sus medidas de normalización, el cual, previa solicitud, estará a disposición de la otra Parte, y se asegurará de que cuando la otra Parte o personas interesadas de la otra Parte soliciten copias íntegras de los documentos, éstas se proporcionen al mismo precio que para su venta interna, además del costo real de envío.
Cuando una Parte permita que personas en su territorio que no pertenezcan al gobierno participen en el proceso de elaboración de las medidas relativas a la normalización, también deberá permitir que participen personas del territorio de la otra Parte que no pertenezcan al gobierno. En dicha participación, las personas del territorio de la otra Parte que no pertenezcan al gobierno expresarán las opiniones y comentarios que tengan sobre la medida de normalización en proceso de elaboración.

Para efectos de este artículo, las autoridades encargadas de la notificación serán las señaladas en el anexo 8-09.

Artículo 8-10: Limitaciones al suministro de información
Nada de lo dispuesto en este capítulo se interpretará como una obligación de una Parte para proveer cualquier información cuya difusión impida el cumplimiento de sus leyes, o que de otra forma sea contraria al interés público.

Artículo 8-11: Comité de Medidas Relativas a la Normalización
Las Partes establecen el Comité de Medidas relativas a la Normalización integrado por representantes de cada una de ellas, de conformidad con el anexo 8-11.

El Comité tendrá, entre otras, las siguientes funciones:
el seguimiento de la aplicación, cumplimiento y administración de este capítulo;

considerar algún asunto en particular sobre las medidas relativas a la normalización y metrología de la otra Parte o sobre las medidas relacionadas con ellas, cuando una Parte tenga duda sobre la interpretación o aplicación de este capítulo, con el objeto de prestar asesoría o emitir recomendaciones técnicas no obligatorias;

facilitar el proceso a través del cual las Partes harán compatibles sus medidas relativas a la normalización y metrología;
servir de un foro para que las Partes consulten sobre temas relacionados con las medidas relativas a la normalización y metrología;

fomentar actividades de cooperación técnica entre las Partes;
ayudar a desarrollar y fortalecer los sistemas de normalización, reglamentación técnica, evaluación de la conformidad y metrología de las Partes;
informar anualmente a la Comisión sobre la aplicación de este capítulo;
facilitar el proceso de negociación de acuerdos de reconocimiento mutuo;
a petición de una Parte, evaluar y recomendar a la Comisión para su aprobación, la inclusión de sectores o subsectores específicos de servicios al anexo 8-01. Dicha inclusión se realizará a través de una decisión de la Comisión; y
podrá establecer los subcomités que considere pertinentes y determinará el ámbito de acción y mandato de los mismos.

El Comité se reunirá por lo menos una vez al año, salvo que las Partes acuerden otra cosa.
Las Partes establecen un Subcomité de Normas de Telecomunicaciones, integrado por representantes de cada Parte. El Subcomité tendrá las siguientes funciones:
desarrollar un programa de trabajo dentro de los 12 meses desde la entrada en vigor de este Tratado, que incluya un cronograma para compatibilizar, de la mejor manera posible, las medidas relativas a la normalización de las Partes para equipo autorizado según lo definido en el capítulo 12 (Telecomunicaciones);
conocer de otros asuntos relativos a la normalización, de equipos o servicios de telecomunicaciones, así como de cualquier otra materia que considere apropiada; y
tomar en cuenta el trabajo relevante realizado por las Partes en otros foros, así como el de los organismos de normalización no gubernamentales.

Artículo 8-12: Cooperación técnica
A petición de una Parte, la otra Parte proporcionará:
información y asistencia técnica en términos y condiciones mutuamente acordados, para fortalecer las medidas relativas a la normalización de esa Parte, así como sus actividades, procesos y sistemas sobre la materia; y
información sobre sus programas de cooperación técnica vinculados con las medidas relativas a la normalización sobre áreas de interés particular.

Cada Parte fomentará que los organismos de normalización en su territorio cooperen con los de la otra Parte en su territorio, según proceda, en actividades de normalización; por ejemplo, por medio de membresías en organismos internacionales de normalización.
En la medida de lo posible, cada Parte informará a la otra Parte de los acuerdos, convenios o programas suscritos a nivel internacional en materia de medidas relativas a la normalización.

Anexo 8-01: Sectores o subsectores de servicios
Para identificar los sectores o subsectores de este anexo, las Partes utilizarán la Clasificación Central de Productos (CPC), tal como ha sido establecida por la Oficina de Estadísticas de las Naciones Unidas, Documentos Estadísticos, Series M, Nº 77, Provisional Central Product Classification, 1991, con sus actualizaciones correspondientes.
Los sectores o subsectores de servicios sujetos a este capítulo son:
servicios de informática y servicios conexos (división 84); y
cualquier otro establecido de conformidad con lo dispuesto en el artículo 8-11(2)(i).

Anexo 8-09: Autoridades encargadas de la notificación
Para efectos del artículo 8-09, la autoridad encargada de la notificación será:
Para el caso de Chile, el Ministerio de Economía, a través del Departamento de Comercio Exterior, o su sucesor.
Para el caso de México, la Secretaría de Comercio y Fomento Industrial, a través de la Dirección General de Normas, o su sucesora.

Anexo 8-11: Integrantes del Comité de Medidas Relativas a la Normalización
Para efectos del artículo 8-11, el Comité estará integrado:
Para el caso de Chile, por el Ministerio de Economía, a través del Departamento de Comercio Exterior, o su sucesor.
Para el caso de México, por la Secretaría de Comercio y Fomento Industrial, a través de la Subsecretaría de Negociaciones Comerciales Internacionales, o su sucesora.

Continuación: Cuarta Parte: Inversión, servicios y asuntos relacionados

TELECOMMUNICATIONS EQUIPMENT STANDARDS REQUIREMENTS

Capítulo 12: Telecomunicaciones
Artículo 12-01: Definiciones
Para efectos de este capítulo, se entenderá por:
comunicaciones internas de la empresa: las telecomunicaciones mediante las cuales una empresa se comunica:
internamente, con o entre sus subsidiarias, sucursales y filiales, según las defina cada Parte; o
de manera no comercial, con otras personas que sean fundamentales para la actividad económica de la empresa, y que sostengan una relación contractual continua con ella;
pero no incluye los servicios de telecomunicaciones que se suministren a personas distintas a las descritas en esta definición;
equipo autorizado: equipo terminal o de otra clase que ha sido aprobado para conectarse a la red pública de telecomunicaciones de acuerdo con los procedimientos de evaluación de la conformidad de una Parte;
equipo terminal: cualquier dispositivo analógico o digital capaz de procesar, recibir, conmutar, señalizar o transmitir señales a través de medios electromagnéticos y que se conecta a la red pública de telecomunicaciones, mediante conexiones de radio o cable, en un punto terminal;
medida relativa a la normalización: "medida relativa a la normalización", tal como se define en el artículo 8-01 (Definiciones);

monopolio: una entidad, incluyendo un consorcio o agencia gubernamental, que se mantenga o sea designado como proveedor exclusivo de redes o servicios públicos de telecomunicaciones en cualquier mercado pertinente en el territorio de una Parte;
procedimiento de evaluación de la conformidad: "procedimiento de evaluación de la conformidad", tal como se define en el artículo 8-01 (Definiciones) e incluye los procedimientos referidos en el anexo 12-01;
protocolo: un conjunto de reglas y formatos que rigen el intercambio de información entre dos entidades pares, para efectos de la transferencia de información de señales y datos;
punto terminal de la red: la demarcación final de la red pública de telecomunicaciones en las instalaciones del usuario;
red privada de telecomunicaciones: la red de telecomunicaciones que se utiliza exclusivamente para comunicaciones internas de una empresa o entre personas predeterminadas;
red pública de telecomunicaciones: la red de telecomunicaciones que se utiliza para explotar comercialmente servicios de telecomunicaciones destinados a satisfacer las necesidades del público en general sin incluir los equipos terminales de telecomunicaciones de los usuarios, ni las redes de telecomunicaciones que se encuentren más allá del punto terminal de la red;
servicio de telecomunicaciones: un servicio suministrado por vías de transmisión y recepción de señales por cualquier medio electromagnético, pero no significa distribución por cable, radiodifusión u otro tipo de distribución electromagnética de programación de radio o televisión;
servicio público de telecomunicaciones: cualquier servicio de telecomunicaciones que una Parte obligue, explícitamente o de hecho, a que se ofrezca al público en general, incluidos el telégrafo, teléfono, télex y transmisión de datos, y que por lo general conlleva la transmisión en tiempo real de información suministrada por el usuario entre dos o más puntos, sin cambio "de punto a punto" en la forma o en el contenido de la información del usuario;
servicios mejorados o de valor agregado: los servicios de telecomunicaciones que emplean sistemas de procesamiento computarizado que:
actúan sobre el formato, contenido, código, protocolo o aspectos similares de la información transmitida del usuario;
proporcionan al cliente información adicional, diferente o reestructurada; o
implican la interacción del usuario con información almacenada; y
telecomunicaciones: toda transmisión, emisión o recepción de signos, señales, escritos, imágenes, sonidos e informaciones de cualquier naturaleza, por línea física, radioelectricidad, medios ópticos u otros sistemas electromagnéticos.

Artículo 12-02: Ambito de aplicación
Este capítulo se refiere a:
las medidas que adopte o mantenga una Parte, relacionadas con el acceso a y el uso de redes o servicios públicos de telecomunicaciones por personas de la otra Parte, incluso el acceso y el uso que dichas personas hagan cuando operen redes privadas para llevar a cabo sus comunicaciones internas de las empresas;
las medidas que adopte o mantenga una Parte sobre la prestación de servicios mejorados o de valor agregado por personas de la otra Parte en territorio de la primera o a través de sus fronteras; y
las medidas relativas a la normalización respecto de la conexión de equipo terminal u otro equipo a las redes públicas de telecomunicaciones.
Salvo para garantizar que las personas que operen estaciones de radiodifusión y sistemas de cable tengan acceso y uso de las redes y de los servicios públicos de telecomunicaciones, este capítulo no se aplica a ninguna medida que una Parte adopte o mantenga en relación con la radiodifusión o la distribución por cable de programación de radio o televisión.
Ninguna disposición de este capítulo se interpretará en el sentido de:
obligar a una Parte a autorizar a una persona de la otra Parte a que establezca, construya, adquiera, arriende, opere o suministre redes o servicios de telecomunicaciones;
obligar a una Parte o que ésta a su vez exija a una persona a que establezca, construya, adquiera, arriende, opere o suministre redes o servicios de telecomunicaciones que no se ofrezcan al público en general;

impedir a una Parte que prohiba a las personas que operen redes privadas el uso de sus redes para suministrar redes o servicios públicos de telecomunicaciones a terceras personas; u
obligar a una Parte a exigir a una persona involucrada en la radiodifusión o distribución por cable de programación de radio o de televisión a que proporcione su infraestructura de distribución por cable o de radiodifusión como red pública de telecomunicaciones.

Artículo 12-03: Acceso a redes y servicios públicos de telecomunicaciones y su uso
Para efectos de este artículo, se entenderá por no discriminatorio, términos y condiciones no menos favorables que aquéllos otorgados a cualquier otro cliente o usuario de redes o servicios públicos de telecomunicaciones similares en condiciones similares.
Cada Parte garantizará que personas de la otra Parte tengan acceso a, y puedan hacer uso de cualquier red o servicio público de telecomunicaciones ofrecidos en su territorio o de manera transfronteriza, inclusive los circuitos privados arrendados, en términos y condiciones razonables y no discriminatorias, para la conducción de sus negocios, incluyendo lo especificado en los demás párrafos de este artículo.
Sujeto a lo dispuesto en los párrafos 7 y 8, cada Parte garantizará que a las personas de la otra Parte se les permita:
comprar o arrendar, y conectar equipo terminal u otro equipo que haga interfaz con la red pública de telecomunicaciones;
interconectar circuitos privados, arrendados o propios, con las redes públicas de telecomunicaciones en el territorio de esa Parte o a través de sus fronteras, incluido el acceso mediante marcación directa a y desde sus usuarios o clientes, o con circuitos arrendados o propios de otra persona, en términos y condiciones mutuamente aceptadas por dichas personas, conforme a lo dispuesto en el anexo 12-03;
realizar funciones de conmutación, señalización y procesamiento; y
utilizar los protocolos de operación que ellos elijan, de conformidad con los planes técnicos de cada Parte.
4. Cada Parte garantizará que la fijación de precios para los servicios públicos de telecomunicaciones refleje los costos económicos directamente relacionados con la prestación de los servicios. Ninguna disposición de este párrafo se interpretará en el sentido de impedir subsidios cruzados entre los servicios públicos de telecomunicaciones.
Cada Parte garantizará que las personas de la otra Parte puedan usar las redes o los servicios públicos de telecomunicaciones para transmitir la información en su territorio o a través de sus fronteras, incluso para las comunicaciones internas de las empresas, y para el acceso a la información contenida en bases de datos o almacenada en otra forma que sea legible por una máquina en territorio de la otra Parte.
Además de lo dispuesto en el artículo 19-02 (Excepciones generales), ninguna disposición de este capítulo se interpretará en el sentido de impedir a una Parte que adopte o aplique cualquier medida necesaria para:
garantizar la seguridad y confidencialidad de los mensajes; o
proteger la privacidad de los suscriptores de redes o de servicios públicos de telecomunicaciones.
Además de lo dispuesto en el artículo 12-05, cada Parte garantizará que no se impongan más condiciones al acceso a redes o servicios públicos de telecomunicaciones y a su uso, que las necesarias para:
salvaguardar las responsabilidades del servicio público de los prestadores de redes o servicios públicos de telecomunicaciones, en particular su capacidad para poner sus redes o servicios a disposición del público en general; o
proteger la integridad técnica de las redes o los servicios públicos de telecomunicaciones.
Siempre que las condiciones para el acceso a redes o servicios públicos de telecomunicaciones y su uso cumplan los criterios establecidos en el párrafo 7, dichas condiciones podrán incluir:
restricciones a la reventa o al uso compartido de tales servicios;
requisitos para usar interfaces técnicas específicas, inclusive protocolos de interfaz, para la interconexión con las redes o los servicios mencionados;
restricciones en la interconexión de circuitos privados, arrendados o propios, con las redes o los servicios mencionados o con circuitos arrendados o propios de otra persona; y
procedimientos para otorgar licencias, permisos, concesiones, registros o notificaciones que, de adoptarse o mantenerse, sean transparentes y que el trámite de las solicitudes se resuelva de manera expedita.

Artículo 12-04: Condiciones para la prestación de servicios mejorados o de valor agregado

Cada Parte garantizará que:

cualquier procedimiento que adopte o mantenga para otorgar licencias, permisos, concesiones, registros o notificaciones referentes a la prestación de servicios mejorados o de valor agregado, sea transparente y no discriminatorio y que el trámite de las solicitudes se resuelva de manera expedita; y

la información requerida, conforme a tales procedimientos, se limite a la necesaria para acreditar que el solicitante tenga solvencia financiera para iniciar la prestación del servicio, o que los servicios o el equipo terminal u otro equipo del solicitante cumplen con las normas o reglamentaciones técnicas aplicables de la Parte.

Ninguna Parte exigirá a un prestador de servicios mejorados o de valor agregado:

prestar esos servicios al público en general;

justificar sus tarifas de acuerdo con sus costos;

registrar una tarifa;

interconectar sus redes con cualquier cliente o red en particular; ni

satisfacer alguna norma o reglamentación técnica específica para una interconexión distinta a la interconexión con una red pública de telecomunicaciones.

No obstante lo dispuesto en el párrafo 2(c), una Parte podrá requerir el registro de una tarifa a:

un prestador de servicios, con el fin de corregir una práctica de este prestador que la Parte haya considerado en un caso particular como contraria a la competencia, de conformidad con su legislación; o

un monopolio al que se le apliquen las disposiciones del artículo 12-06.

Artículo 12-05: Medidas relativas a la normalización

Cada Parte garantizará que sus medidas relativas a la normalización que se refieren a la conexión del equipo terminal o de otro equipo a las redes públicas de telecomunicaciones, incluso aquellas medidas que se refieren al uso del equipo de prueba y medición para el procedimiento de evaluación de la conformidad, se adopten o mantengan solamente en la medida que sean necesarias para:

impedir daños técnicos a las redes públicas de telecomunicaciones;

impedir la interferencia técnica con los servicios públicos de telecomunicaciones, o el deterioro de éstos;

impedir la interferencia electromagnética, y asegurar la compatibilidad con otros usos del espectro radioeléctrico;

impedir el mal funcionamiento de los equipos de tasación, cobro y facturación;

garantizar la seguridad del usuario y su acceso a las redes o servicios públicos de telecomunicaciones; o

asegurar el uso eficiente del espectro radioeléctrico.

Cada Parte podrá establecer el requisito de aprobación para la conexión a la red pública de telecomunicaciones de equipo terminal o de otro equipo que no esté autorizado, siempre que los criterios de aprobación sean compatibles con lo dispuesto en el párrafo 1.

Cada Parte garantizará que los puntos terminales de las redes públicas de telecomunicaciones se definan sobre bases razonables y transparentes.

Ninguna Parte exigirá autorización por separado del equipo que se conecte por el lado del usuario al equipo autorizado que sirve como dispositivo de protección cumpliendo con los criterios del párrafo 1.

Cada Parte:

asegurará que sus procedimientos de evaluación de la conformidad sean transparentes y no discriminatorios, y que las solicitudes que se presenten al efecto se tramiten de manera expedita;

permitirá que cualquier entidad técnicamente calificada realice la prueba requerida al equipo terminal o a otro equipo que vaya a ser conectado a la red pública de telecomunicaciones, de acuerdo con los procedimientos de evaluación de la conformidad de la Parte, a reserva del derecho de la misma de revisar la exactitud y la integridad de los resultados de las pruebas; y

garantizará que no sea discriminatoria ninguna medida que adopte o mantenga para autorizar a determinadas personas como agentes de proveedores de equipo de telecomunicaciones ante los organismos competentes de la Parte para la evaluación de la conformidad.

A más tardar 18 meses después de la fecha de entrada en vigor de este Tratado, cada Parte adoptará, como parte de sus procedimientos de evaluación de la conformidad, las disposiciones necesarias para aceptar los resultados de las pruebas realizadas por laboratorios o instalaciones de pruebas en territorio de la otra Parte, de conformidad con las medidas y procedimientos relativos a la normalización de la Parte a la que le corresponda aceptar.
El Subcomité de Normas de Telecomunicaciones desempeñará las funciones señaladas en el artículo 8-11(4) (Comité de Medidas Relativas a la Normalización).

Artículo 12-06: Monopolios
Cuando una Parte mantenga o designe un monopolio para proveer redes y servicios públicos de telecomunicaciones y el monopolio compita, directamente o a través de una filial, en la prestación de servicios mejorados o de valor agregado u otros bienes o servicios vinculados con las telecomunicaciones, esa Parte se asegurará de que el monopolio no utilice su posición monopólica para incurrir en prácticas contrarias a la competencia en esos mercados, ya sea de manera directa o a través de los tratos con sus filiales, de modo tal que afecte desventajosamente a una persona de la otra Parte. Dichas prácticas pueden incluir los subsidios cruzados, conductas predatorias y la discriminación en el acceso a las redes y los servicios públicos de telecomunicaciones.
Cada Parte adoptará o mantendrá medidas eficaces para impedir la conducta contraria a la competencia, tales como:
requisitos de contabilidad;
requisitos de separación estructural;
reglas para asegurar que el monopolio otorgue a sus competidores acceso a y uso de sus redes o sus servicios públicos de telecomunicaciones en términos y condiciones no menos favorables que los que se conceda a sí mismo o a sus filiales; o reglas para asegurar la divulgación oportuna de los cambios técnicos de las redes públicas de telecomunicaciones y sus interfaces.

Artículo 12-07: Transparencia
Además de lo dispuesto en el artículo 16-03 (Publicación), cada Parte pondrá a disposición del público sus medidas relativas al acceso a las redes o los servicios públicos de telecomunicaciones y a su uso, incluyendo las medidas referentes a:
tarifas y otros términos y condiciones del servicio;
especificaciones de las interfaces técnicas con tales redes y servicios;
información sobre los órganos responsables de la elaboración y adopción de medidas relativas a la normalización que afecten dicho acceso y uso;
condiciones aplicables a la conexión de equipo terminal o de otra clase a las redes públicas de telecomunicaciones; y
requisitos de notificación, permiso, registro, certificado, licencia o concesión.

Artículo 12-08: Relación con otros capítulos
En caso de incompatibilidad entre una disposición de este capítulo y una disposición de otro capítulo, prevalecerá la del primero en la medida de la incompatibilidad.

Artículo 12-09: Relación con organizaciones y tratados internacionales
Las Partes reconocen la importancia de las normas internacionales para la compatibilidad e interoperabilidad global de las redes o servicios de telecomunicaciones, y se comprometen a promover dichas normas mediante la labor de los organismos internacionales competentes, tales como la Unión Internacional de Telecomunicaciones y la Organización Internacional de Normalización.

Artículo 12-10: Cooperación técnica y otras consultas
Con el fin de estimular el desarrollo de la infraestructura de servicios de telecomunicaciones interoperables, las Partes cooperarán en el intercambio de información técnica, en el desarrollo de programas intergubernamentales de

entrenamiento, así como en otras actividades afines. En cumplimiento de esta obligación, las Partes pondrán especial énfasis en los programas de intercambio existentes.
Las Partes se consultarán para determinar la posibilidad de liberalizar aún más el comercio de todos los servicios de telecomunicaciones, incluidas las redes y los servicios públicos de telecomunicaciones.

Anexo 12-01: Procedimientos de evaluación de la conformidad
Para efectos de este capítulo, procedimientos de evaluación de la conformidad incluyen:
Para el caso de Chile:
Subsecretaría de Telecomunicaciones, Ministerio de Transportes y Telecomunicaciones
Ley 18.168, Ley General de Telecomunicaciones
Ley 18.838, Consejo Nacional de Televisión y sus modificaciones
Ley 16.643, sobre Abusos de Publicidad
Decreto Supremo 220 del Ministerio de Transportes y Telecomunicaciones, de 1981, Reglamento de Homologación de Aparatos Telefónicos
Para el caso de México:
Subsecretaría de Comunicaciones, Secretaría de Comunicaciones y Transportes
Comisión Federal de Telecomunicaciones
Ley Federal de Telecomunicaciones y sus disposiciones legales y administrativas

Anexo 12-03: Interconexión de circuitos privados
Para efectos del artículo 12-03, para el caso de Chile, se entenderá que la interconexión de los circuitos privados con las redes públicas de telecomunicaciones no dará acceso a tráfico desde dichos circuitos privados hacia las redes públicas o viceversa, sean dichos circuitos privados arrendados o propios.

QUINTA PARTE - PROPIEDAD INTELECTUAL

Capítulo 15: Propiedad Intelectual
Sección A - Definiciones y disposiciones generales

Artículo 15-01: Definiciones
Para efectos de este capítulo, se entenderá por:
Convenio de Berna: el Convenio de Berna para la Protección de las Obras Literarias y Artísticas, conforme al Acta de París, de fecha 24 de julio de 1971;
Convenio de Ginebra: el Convenio para la Protección de los Productores de Fonogramas contra la Reproducción no Autorizada de sus Fonogramas, adoptado en la ciudad de Ginebra el 29 de octubre de 1971;
Convenio de París: el Convenio de París para la Protección de la Propiedad Industrial, conforme al Acta de Estocolmo, de fecha 14 de julio de 1967; y
Convención de Roma: la Convención Internacional sobre Protección de los Artistas Intérpretes o Ejecutantes, de los Productores de Fonogramas y los Organismos de Radiodifusión, adoptada en la ciudad de Roma el 26 de octubre de 1961.

Artículo 15-02: Protección de los derechos de propiedad intelectual
Los derechos de propiedad intelectual regulados en este capítulo, corresponden a los derechos de autor, los derechos conexos, las marcas de fábrica o de comercio y las denominaciones de origen a que se refiere este capítulo.
Cada Parte otorgará en su territorio a los nacionales de la otra Parte, protección y defensa adecuada y eficaz para los derechos de propiedad intelectual a los que se refiere este capítulo y asegurará que las medidas destinadas a defender esos derechos no se conviertan, a su vez, en obstáculos al comercio legítimo.

Cada Parte podrá prever en su legislación, una protección más amplia que la exigida en este capítulo, a condición de que tal protección no infrinja las disposiciones del mismo.

Artículo 15-03: Relación con otros convenios sobre propiedad intelectual

Ninguna disposición de este capítulo, referida a los derechos de propiedad intelectual, irá en detrimento de las obligaciones que las Partes puedan tener entre sí en virtud del Convenio de París, el Convenio de Berna, la Convención de Roma y el Convenio de Ginebra.

Con objeto de otorgar protección y defensa adecuada y eficaz a los derechos de propiedad intelectual a los que se refiere este capítulo, las Partes aplicarán, cuando menos, las disposiciones sustantivas del Convenio de París, el Convenio de Berna, la Convención de Roma y el Convenio de Ginebra.

Artículo 15-04: Trato nacional

Cada Parte otorgará a los nacionales de la otra Parte un trato no menos favorable que el que otorgue a sus nacionales con respecto a la protección y defensa de los derechos de propiedad intelectual referidos en este capítulo, a reserva de las excepciones ya previstas en, respectivamente, el Convenio de París, el Convenio de Berna, la Convención de Roma y el Convenio de Ginebra.

Cada Parte podrá recurrir a las excepciones permitidas en el párrafo 1 en relación con los procedimientos judiciales y administrativos, incluida la designación de un domicilio legal o el nombramiento de un agente dentro de la jurisdicción de una Parte, solamente cuando tales excepciones:

sean necesarias para conseguir el cumplimiento de leyes y reglamentos que no sean incompatibles con las disposiciones de este capítulo; o

no se apliquen de manera que constituyan una restricción encubierta del comercio.

Ninguna Parte podrá exigir a los titulares de derechos de propiedad intelectual referidos en este capítulo, que cumplan con formalidad o condición alguna para adquirir derechos de autor y derechos conexos, como condición para el otorgamiento del trato nacional conforme a este artículo.

Artículo 15-05: Trato de nación más favorecida

Con respecto a la protección de los derechos de propiedad intelectual a los que se refiere este capítulo, toda ventaja, favor, privilegio o inmunidad que conceda una Parte a los nacionales de cualquier otro país no Parte, se otorgará inmediatamente y sin condiciones a los nacionales de la otra Parte. Quedan exentos de esta obligación toda ventaja, favor, privilegio o inmunidad concedidos por una Parte que:

se deriven de acuerdos internacionales sobre asistencia judicial y observancia de la ley de carácter general y no limitados en particular a la protección de la propiedad intelectual;

se hayan otorgado de conformidad con las disposiciones del Convenio de Berna o de la Convención de Roma que autorizan que el trato concedido no esté en función del trato nacional sino del trato dado en otro país; o

se refieran a los derechos de los artistas intérpretes o ejecutantes, los productores de fonogramas y los organismos de radiodifusión, que no estén previstos en este capítulo.

Artículo 15-06: Control de prácticas y condiciones abusivas o contrarias a la competencia

Las Partes convienen que ciertas prácticas o condiciones relativas a la concesión de las licencias de los derechos de propiedad intelectual a los que se refiere este capítulo, que restringen la competencia, pueden tener efectos perjudiciales para el comercio y pueden impedir la transferencia y la divulgación de la tecnología.

Ninguna disposición de este capítulo impedirá que las Partes especifiquen en su legislación las prácticas o condiciones relativas a la concesión de licencias que puedan constituir, en determinados casos, un abuso de los derechos de propiedad intelectual que tenga un efecto negativo sobre la competencia en el mercado correspondiente. Como se establece en el párrafo 1, una Parte podrá adoptar, en forma compatible con las restantes disposiciones de este capítulo, medidas apropiadas para impedir o controlar dichas prácticas que puedan incluir las condiciones exclusivas de

retrocesión, las condiciones que impidan la impugnación de la validez y las licencias conjuntas obligatorias, a la luz de las leyes y reglamentos pertinentes de esa Parte.

Artículo 15-07: Cooperación para eliminar el comercio de bienes objeto de infracciones
Cada Parte designará una oficina o autoridad competente a efectos de intercambiar información relativa a bienes o servicios que hayan sido objeto de infracción a los derechos de propiedad intelectual a los que se refiere este capítulo, con miras a eliminar el comercio ilegítimo de este tipo de bienes o servicios.

Artículo 15-08: Alcance de la cooperación
La cooperación mencionada en el artículo 15-07, excluirá, si una Parte así lo requiere, aquellas materias que estén sometidas a los tribunales competentes de cada Parte.

Sección B - Derechos de autor y derechos conexos

Artículo 15-09: Derechos de autor
Cada Parte protegerá las obras comprendidas en el Artículo 2 del Convenio de Berna, incluyendo cualesquiera otras que incorporen una expresión original en el sentido que confiere a ese término dicho Convenio.
Cada Parte otorgará a los autores o a sus causahabientes los derechos que se enuncian en el Convenio de Berna con respecto a las obras contempladas en el párrafo 1.
Los programas computacionales o de cómputo, sean programas fuente o programas objeto, serán protegidos como obras literarias en virtud del Convenio de Berna.
Las compilaciones de datos o de otros materiales, en forma legible por máquina o en otra forma, que por razones de la selección o disposición de sus contenidos constituyan creaciones de carácter intelectual, serán protegidas como tales. Esa protección no abarcará los datos o materiales en sí mismos y se entenderá sin perjuicio de cualquier derecho de autor que subsista respecto de dichos datos o materiales.
Al menos respecto de los programas computacionales o de cómputo y de las obras cinematográficas, las Partes conferirán a los autores, causahabientes y demás titulares, el derecho de autorizar o prohibir el arrendamiento comercial al público de los originales o copias de sus obras amparadas por el derecho de autor. Se exceptuará a una Parte de esa obligación con respecto a las obras cinematográficas, a menos que el arrendamiento haya dado lugar a una realización muy extendida de copias de esas obras que menoscabe en medida importante el derecho exclusivo de reproducción conferido en dicha Parte a los autores, causahabientes y demás titulares. En lo referente a los programas computacionales o de cómputo, esa obligación no se aplica a los arrendamientos cuyo objeto esencial no sea el programa en sí.

Artículo 15-10: Artistas intérpretes o ejecutantes
Cada Parte otorgará a los artistas intérpretes o ejecutantes los derechos a que se refiere la Convención de Roma.
No obstante lo anterior, una vez que un artista intérprete o ejecutante haya consentido que se incorpore su actuación en una fijación visual o audiovisual, dejará de ser aplicable el Artículo 7 de la Convención de Roma.

Artículo 15-11: Productores de fonogramas
Cada Parte otorgará a los productores de fonogramas, los derechos a que se refiere la Convención de Roma y el Convenio de Ginebra, incluyendo el derecho de autorizar o prohibir la primera distribución pública del original y de cada copia del fonograma mediante venta, arrendamiento o cualquier otro medio.
Cada Parte conferirá a los productores de fonogramas, conforme a su legislación, el derecho de autorizar o prohibir el arrendamiento comercial al público de los originales o copias de los fonogramas protegidos.

Artículo 15-12: Protección de señales de satélite portadoras de programas

Dentro de los cinco años siguientes a la entrada en vigor de este Tratado, las Partes se comprometen a establecer que incurrirá en responsabilidad civil todo aquel que fabrique, importe, venda, dé en arrendamiento, o realice un acto con un fin comercial, que permita tener dispositivos que sean de ayuda primordial para descifrar una señal de satélite cifrada portadora de programas, o uso de éstos con fines comerciales, sin autorización del prestador o distribuidor legítimo del servicio, dependiendo de la legislación de cada Parte.

Artículo 15-13: Facultades conferidas a los derechos de autor y derechos conexos
Cada Parte dispondrá que para los derechos de autor y derechos conexos, cualquier persona que adquiera o detente derechos económicos o patrimoniales:
pueda libremente y por separado, transferirlos a cualquier título; y
tenga la capacidad de ejercitar esos derechos en nombre propio y de disfrutar plenamente los beneficios derivados de los mismos.
Cada Parte circunscribirá las limitaciones y excepciones a los derechos de autor y derechos conexos a casos especiales determinados que no impidan su explotación normal, ni ocasionen perjuicios injustificados a los legítimos intereses del titular del derecho.

Artículo 15-14: Duración de los derechos de autor y de los derechos conexos
El derecho de autor dura toda la vida de éste y se extiende, como mínimo, hasta 50 años después de su muerte.
Cuando la duración de la protección de una obra se calcule sobre una base distinta de la vida de una persona física o natural, esa duración será de no menos de 50 años contados desde el final del año calendario de la publicación autorizada o, a falta de tal publicación autorizada, dentro de un plazo de 50 años a partir de la realización de la obra, contados a partir del final del año calendario de su realización.
La duración de la protección concedida a los artistas intérpretes o ejecutantes y los productores de fonogramas no podrá ser inferior a 50 años, contados a partir del final del año calendario en que se haya realizado la fijación o haya tenido lugar la interpretación o ejecución.
La duración de la protección concedida a los organismos de radiodifusión será como mínimo de 25 años contados a partir del final del año calendario en que se haya realizado la primera emisión.

Sección C - Marcas de fábrica o de comercio

Artículo 15-15: Materia objeto de la protección
Podrá constituir una marca de fábrica o de comercio cualquier signo o combinación de signos que sean capaces de distinguir los bienes o servicios de una empresa de los de otras empresas. Tales signos podrán registrarse como marcas de fábrica o de comercio, en particular las palabras, incluidos los nombres de personas, las letras, los números, los elementos figurativos y las combinaciones de colores, así como cualquier combinación de estos signos. Cuando los signos no sean intrínsecamente capaces de distinguir los bienes o servicios pertinentes, cada Parte podrá supeditar la posibilidad de registro de los mismos al carácter distintivo que hayan adquirido mediante su uso. Las Partes podrán exigir como condición para el registro que los signos sean perceptibles visualmente.
Las Partes podrán negar el registro de marcas de fábrica o de comercio que atenten contra la moral y las buenas costumbres, las que reproduzcan símbolos nacionales o las que induzcan a error al público.
La naturaleza del producto o servicio al que la marca de fábrica o de comercio ha de aplicarse no será en ningún caso obstáculo para el registro de la marca.
Cada Parte publicará las marcas de fábrica o de comercio antes de su registro o prontamente después de él, y ofrecerán una oportunidad razonable de pedir la anulación del registro. Además, cada Parte podrá ofrecer la oportunidad de oponerse al registro de una marca de fábrica o de comercio.

Artículo 15-16: Derechos conferidos
El titular de una marca de fábrica o de comercio registrada gozará del derecho exclusivo de impedir que terceros, sin su consentimiento, utilicen en el curso de operaciones comerciales signos idénticos o similares para bienes o servicios que sean idénticos o similares a aquellos para los que se ha registrado la marca, cuando ese uso dé lugar a probabilidad de confusión. Se presumirá que existe probabilidad de confusión en caso de que se use un signo idéntico para bienes o servicios idénticos. Los derechos antes mencionados se entenderán sin perjuicio de los derechos existentes con anterioridad y no afectarán la posibilidad de las Partes de reconocer derechos basados en el uso.

Artículo 15-17: Marcas de fábrica o de comercio notoriamente conocidas
Cada Parte aplicará el Artículo 6 bis del Convenio de París a las marcas de servicios.
Se entenderá que una marca es notoriamente conocida en una Parte, cuando un sector determinado del público o de los círculos comerciales de la Parte conozca la marca, como consecuencia de las actividades comerciales desarrolladas en esa Parte o fuera de ella, por una persona que emplea esa marca en relación con sus bienes o servicios, así como cuando se tenga conocimiento de la marca en el territorio de la Parte, como consecuencia de la promoción o publicidad de la misma.

Cada Parte asegurará, en los términos de su legislación, los medios necesarios para impedir o anular la inscripción como marca de aquellos signos o figuras iguales o similares a una marca notoriamente conocida, para ser aplicada a cualquier bien o servicio, en cualquier caso en que el uso de la marca, por quien solicita su registro, pudiese crear confusión o un riesgo de asociación con la persona referida en el párrafo 2 o constituyese un aprovechamiento injusto del prestigio de la marca. Esta prohibición no será aplicable cuando el solicitante del registro sea la persona referida en el párrafo 2.
A efectos de demostrar la notoriedad de la marca, podrán emplearse todos los medios probatorios admitidos por la Parte en la cual se desea probar la notoriedad de la misma.

Artículo 15-18: Excepciones
Las Partes podrán establecer excepciones limitadas a los derechos conferidos por una marca de fábrica o de comercio, por ejemplo el uso leal de términos descriptivos, a condición de que en ellas se tengan en cuenta los intereses legítimos del titular de la marca y de terceros.

Artículo 15-19: Duración de la protección
El registro inicial de una marca de fábrica o de comercio y cada una de las renovaciones del registro tendrán una duración de no menos de 10 años contados a partir de la fecha de la presentación de la solicitud o de la fecha de su concesión. El registro de una marca de fábrica o de comercio será renovable indefinidamente.

Artículo 15-20: Requisito de uso
Si para mantener el registro de una marca de fábrica o de comercio una Parte exige el uso, el registro sólo podrá anularse después de un periodo ininterrumpido de tres años como mínimo de falta de uso, a menos que el titular de la marca de fábrica o de comercio demuestre que hubo para ello razones válidas basadas en la existencia de obstáculos a dicho uso. Se reconocerán como razones válidas de falta de uso las circunstancias que surjan independientemente de la voluntad del titular de la marca y que constituyan un obstáculo al uso de la misma, como las restricciones a la importación u otros requisitos oficiales impuestos a los bienes o servicios protegidos por la marca.
Cuando esté controlada por el titular, se considerará que la utilización de una marca de fábrica o de comercio por otra persona constituye uso de la marca a los efectos de mantener el registro.

Artículo 15-21: Renovación de una marca
Sujeto a lo dispuesto en el anexo 15-21, si para la renovación de una marca de fábrica o de comercio una Parte exige el uso, el registro no podrá renovarse si no se acredita el uso de la marca de fábrica o de comercio, de acuerdo a lo establecido en la legislación de cada Parte.

Artículo 15-22: Otros requisitos
No se complicará injustificadamente el uso de una marca de fábrica o de comercio en el curso de operaciones comerciales con exigencias especiales, como por ejemplo el uso con otra marca de fábrica o de comercio, el uso en una forma especial o el uso de una manera que menoscabe la capacidad de la marca para distinguir los bienes o servicios de una empresa de los de otras empresas.

Artículo 15-23: Licencias y cesión
Cada Parte podrá establecer las condiciones para las licencias y la cesión de las marcas de fábrica o de comercio, quedando entendido que no se permitirán las licencias obligatorias de marcas de fábrica o de comercio y que el titular de una marca de fábrica o de comercio registrada tendrá derecho a cederla con o sin la transferencia de la empresa a que pertenezca la marca.

Artículo 15-36: Suspensión del despacho de aduana por las autoridades aduaneras
Las Partes adoptarán procedimientos para que el titular de un derecho, que tenga motivos válidos para sospechar que se prepara la importación de mercancías de marca de fábrica o de comercio falsificadas o mercancías pirata que lesionan el derecho de autor, pueda presentar a las autoridades competentes, administrativas o judiciales, una demanda por escrito con objeto de que las autoridades de aduanas suspendan el despacho de esas mercancías para libre circulación. No habrá obligación de aplicar estos procedimientos a las importaciones de mercancías puestas en el mercado de la otra Parte o de un país no Parte por el titular del derecho o con su consentimiento, ni a las mercancías en tránsito.
Las Partes podrán autorizar para que se haga dicha demanda también respecto de mercancías que supongan otras infracciones de los derechos de propiedad intelectual, siempre que se cumplan las prescripciones de los artículos 15-36 al 15-45. Las Partes podrán establecer también procedimientos análogos para que las autoridades de aduanas suspendan el despacho de esas mercancías destinadas a la exportación desde su territorio.

Artículo 15-37: Demanda
Se exigirá a todo titular de un derecho que inicie un procedimiento de conformidad con el artículo 15-36 que presente pruebas suficientes que demuestren a satisfacción de las autoridades competentes que, de acuerdo con la legislación del país de importación, existe presunción de infracción de su derecho de propiedad intelectual y que ofrezca una descripción suficientemente detallada de las mercancías de modo que puedan ser reconocidas con facilidad por las autoridades de aduanas. Las autoridades competentes comunicarán al demandante, dentro de un plazo razonable, si han aceptado la demanda y, cuando sean ellas mismas quienes lo establezcan, el plazo de actuación de las autoridades de aduanas.

Artículo 15-38: Fianza o garantía equivalente
Las autoridades competentes estarán facultadas para exigir al demandante que aporte una fianza o garantía equivalente que sea suficiente para proteger al demandado y a las autoridades competentes e impedir abusos. Esa fianza o garantía equivalente no deberá disuadir indebidamente del recurso a estos procedimientos.

Artículo 15-39: Notificación de la suspensión
Se notificará prontamente al importador y al demandante la suspensión del despacho de aduana de las mercancías, de conformidad con el artículo 15-36.

Artículo 15-40: Duración de la suspensión
En caso de que en un plazo no superior a 10 días hábiles contados a partir de la comunicación de la suspensión al demandante mediante aviso, las autoridades de aduanas no hayan sido informadas de que una parte, que no sea el demandado, ha iniciado el procedimiento conducente a una decisión sobre el fondo de la cuestión o de que la autoridad debidamente facultada al efecto ha adoptado medidas provisionales que prolonguen la suspensión del despacho de

aduana de las mercancías, se procederá al despacho de las mismas si se han cumplido todas las demás condiciones requeridas para su importación o exportación. En los casos en que proceda, el plazo mencionado podrá ser prorrogado por otros 10 días hábiles. Si se ha iniciado el procedimiento conducente a una decisión sobre el fondo del asunto a petición del demandado, se procederá en un plazo razonable a una revisión, que incluirá el derecho de éste a ser oído, con objeto de decidir si esas medidas deben modificarse, revocarse o confirmarse. No obstante, cuando la suspensión del despacho de aduana se efectúe o se continúe en virtud de una medida judicial provisional, se aplicarán las disposiciones del artículo 15-35(6).

Artículo 15-41: Indemnización al importador y al propietario de las mercancías
Las autoridades pertinentes estarán facultadas para ordenar al demandante que pague al importador, al consignatario y al propietario de las mercancías una indemnización adecuada por todo daño a ellos causado por la retención infundada de las mercancías o por la retención de las que se hayan despachado de conformidad con lo dispuesto en el artículo 15-40.

Artículo 15-42: Derecho de inspección e información
Sin perjuicio de la protección de la información confidencial, las Partes facultarán a las autoridades competentes para dar al titular del derecho oportunidades suficientes para que haga inspeccionar, con el fin de fundamentar sus reclamaciones, cualesquiera mercancías retenidas por las autoridades de aduanas. Las autoridades competentes estarán asimismo facultadas para dar al importador oportunidades equivalentes para que haga inspeccionar esas mercancías. Las Partes podrán facultar a las autoridades competentes para que, cuando se haya adoptado una decisión positiva sobre el fondo del asunto, comuniquen al titular del derecho el nombre y dirección del consignador, el importador y el consignatario, así como la cantidad de las mercancías de que se trate.

Artículo 15-43: Actuación de oficio
Cuando las Partes pidan a las autoridades competentes que actúen por propia iniciativa y suspendan el despacho de aquellas mercancías respecto de las cuales tengan la presunción de que infringen un derecho de propiedad intelectual:
las autoridades competentes podrán pedir en cualquier momento al titular del derecho toda información que pueda serles útil para ejercer esa potestad;
la suspensión deberá notificarse sin demora al importador y al titular del derecho. Si el importador recurre contra ella ante las autoridades competentes, la suspensión quedará sujeta, a las condiciones previstas en el artículo 15-40; y
las Partes eximirán tanto a las autoridades como a los funcionarios públicos de las responsabilidades que darían lugar a las medidas correctoras adecuadas sólo en el caso de actuaciones llevadas a cabo o proyectadas de buena fe.

Artículo 15-44: Recursos
Sin perjuicio de las demás acciones que correspondan al titular del derecho y a reserva del derecho del demandado a apelar ante una autoridad judicial, las autoridades competentes estarán facultadas para ordenar la destrucción o eliminación de las mercancías infractoras, de conformidad con los principios establecidos en el artículo 15-31. En cuanto a las mercancías de marca de fábrica o de comercio falsificadas, las autoridades no permitirán, salvo en circunstancias excepcionales, que las mercancías infractoras se reexporten en el mismo estado ni las someterán a un procedimiento aduanero distinto.

Artículo 15-45: Importaciones insignificantes
Las Partes podrán excluir de la aplicación de las disposiciones precedentes las cantidades pequeñas de mercancías que no tengan carácter comercial y formen parte del equipaje personal de los viajeros o se envíen en pequeñas partidas.

Artículo 15-46: Procedimientos penales
Las Partes establecerán procedimientos y sanciones penales al menos para los casos de falsificación dolosa de marcas de fábrica o de comercio o de piratería lesiva del derecho de autor a escala comercial. Los recursos disponibles

comprenderán la pena de prisión y/o la imposición de sanciones pecuniarias suficientemente disuasivas que sean coherentes con el nivel de las sanciones aplicadas por delitos de gravedad correspondiente. Cuando proceda, entre los recursos disponibles figurará también la confiscación, el decomiso y la destrucción de las mercancías infractoras y de todos los materiales y accesorios utilizados predominantemente para la comisión del delito. Las Partes podrán prever la aplicación de procedimientos y sanciones penales en otros casos de infracción de derechos de propiedad intelectual, en particular cuando se cometan con dolo y a escala comercial.

MARKET ACCESS OF TRADE IN GOODS

Sección B - Trato nacional
Artículo 3-03: Trato nacional
Cada Parte otorgará trato nacional a los bienes de la otra Parte de conformidad con el Artículo III del GATT de 1994, incluidas sus notas interpretativas. Para tal efecto, el Artículo III del GATT de 1994 y sus notas interpretativas se incorporan a este Tratado y son parte integrante del mismo.
Las disposiciones del párrafo 1 referentes a trato nacional significan, respecto a un estado, un trato no menos favorable que el trato más favorable que dicho estado conceda a cualesquiera bienes similares, competidores directos o sustitutos, según el caso, de la Parte de la cual sea integrante. Para estos efectos, "bienes de la Parte" incluye bienes producidos en un estado de esa Parte.
Los párrafos 1 y 2 no se aplican a las medidas señaladas en el anexo 3-03.

Sección C - Aranceles
Artículo 3-04: Eliminación arancelaria
Salvo lo dispuesto en los anexos 3-04(3) y 3-04(4), las Partes eliminarán todos los aranceles aduaneros sobre bienes originarios a la fecha de entrada en vigor de este Tratado.
Salvo que se disponga otra cosa en este Tratado, ninguna Parte podrá incrementar ningún arancel aduanero existente, ni adoptar ningún arancel nuevo, sobre un bien originario.
Salvo que se disponga otra cosa en este Tratado, cada Parte eliminará progresivamente sus aranceles aduaneros sobre bienes originarios en concordancia con su Programa de Desgravación, incorporado en el anexo 3-04(3).
No obstante lo dispuesto en los párrafos 1, 2 y 3, una Parte podrá adoptar o mantener aranceles aduaneros de conformidad con sus derechos y obligaciones derivados del GATT de 1994, sobre los bienes originarios comprendidos en el anexo 3-04(4), hasta el momento en que se acuerde lo contrario entre las Partes conforme a lo establecido en el párrafo 5.
Las Partes realizarán consultas, a solicitud de cualesquiera de ellas, para examinar la posibilidad de acelerar la eliminación de aranceles aduaneros prevista en el anexo 3-04(3), o incorporar al Programa de Desgravación de una Parte bienes comprendidos en el anexo 3-04(4). Cuando las Partes, de conformidad con el artículo 17-01(3) (Comisión de Libre Comercio), aprueben entre ellas un acuerdo sobre la eliminación acelerada del arancel aduanero sobre un bien o sobre la inclusión de un bien al Programa de Desgravación, ese acuerdo prevalecerá sobre cualquier arancel aduanero o periodo de desgravación señalado de conformidad con sus listas para ese bien.
A partir de la entrada en vigor de este Tratado quedan sin efecto las preferencias negociadas u otorgadas entre las Partes conforme al Tratado de Montevideo 1980.
Salvo que se disponga otra cosa en este Tratado, cada Parte podrá adoptar o mantener medidas sobre las importaciones con el fin de asignar el cupo de importaciones realizadas según una cuota mediante aranceles (arancel cuota) establecido en los anexos 3-04(3) ó 3-04(4), siempre y cuando tales medidas no tengan efectos comerciales restrictivos sobre las importaciones, adicionales a los derivados de la imposición del arancel cuota.
A petición escrita de una Parte, la Parte que aplique o se proponga aplicar medidas sobre las importaciones de acuerdo con el párrafo 7 realizará consultas para revisar la administración de dichas medidas.

Los párrafos 1, 2 y 3 no tienen como propósito evitar que una Parte mantenga o aumente un arancel aduanero como puede estar permitido de conformidad con una disposición de solución de controversias del Acuerdo sobre la OMC o cualquier otro acuerdo negociado conforme al Acuerdo sobre la OMC.

TELECOMMUNICATIONS SERVICES

Standards Requirements
Artículo 12-09: Relación con organizaciones y tratados internacionales
Las Partes reconocen la importancia de las normas internacionales para la compatibilidad e interoperabilidad global de las redes o servicios de telecomunicaciones, y se comprometen a promover dichas normas mediante la labor de los organismos internacionales competentes, tales como la Unión Internacional de Telecomunicaciones y la Organización Internacional de Normalización.

Interconnectivity Access
Artículo 12-03: Acceso a redes y servicios públicos de telecomunicaciones y su uso
Para efectos de este artículo, se entenderá por no discriminatorio, términos y condiciones no menos favorables que aquéllos otorgados a cualquier otro cliente o usuario de redes o servicios públicos de telecomunicaciones similares en condiciones similares.

Cada Parte garantizará que personas de la otra Parte tengan acceso a, y puedan hacer uso de cualquier red o servicio público de telecomunicaciones ofrecidos en su territorio o de manera transfronteriza, inclusive los circuitos privados arrendados, en términos y condiciones razonables y no discriminatorias, para la conducción de sus negocios, incluyendo lo especificado en los demás párrafos de este artículo.

Sujeto a lo dispuesto en los párrafos 7 y 8, cada Parte garantizará que a las personas de la otra Parte se les permita: comprar o arrendar, y conectar equipo terminal u otro equipo que haga interfaz con la red pública de telecomunicaciones; interconectar circuitos privados, arrendados o propios, con las redes públicas de telecomunicaciones en el territorio de esa Parte o a través de sus fronteras, incluido el acceso mediante marcación directa a y desde sus usuarios o clientes, o con circuitos arrendados o propios de otra persona, en términos y condiciones mutuamente aceptadas por dichas personas, conforme a lo dispuesto en el anexo 12-03;

realizar funciones de conmutación, señalización y procesamiento; y
utilizar los protocolos de operación que ellos elijan, de conformidad con los planes técnicos de cada Parte.

4. Cada Parte garantizará que la fijación de precios para los servicios públicos de telecomunicaciones refleje los costos económicos directamente relacionados con la prestación de los servicios. Ninguna disposición de este párrafo se interpretará en el sentido de impedir subsidios cruzados entre los servicios públicos de telecomunicaciones.

Cada Parte garantizará que las personas de la otra Parte puedan usar las redes o los servicios públicos de telecomunicaciones para transmitir la información en su territorio o a través de sus fronteras, incluso para las comunicaciones internas de las empresas, y para el acceso a la información contenida en bases de datos o almacenada en otra forma que sea legible por una máquina en territorio de la otra Parte.

Además de lo dispuesto en el artículo 19-02 (Excepciones generales), ninguna disposición de este capítulo se interpretará en el sentido de impedir a una Parte que adopte o aplique cualquier medida necesaria para:
garantizar la seguridad y confidencialidad de los mensajes; o
proteger la privacidad de los suscriptores de redes o de servicios públicos de telecomunicaciones.

Además de lo dispuesto en el artículo 12-05, cada Parte garantizará que no se impongan más condiciones al acceso a redes o servicios públicos de telecomunicaciones y a su uso, que las necesarias para:
salvaguardar las responsabilidades del servicio público de los prestadores de redes o servicios públicos de telecomunicaciones, en particular su capacidad para poner sus redes o servicios a disposición del público en general; o
proteger la integridad técnica de las redes o los servicios públicos de telecomunicaciones.

Siempre que las condiciones para el acceso a redes o servicios públicos de telecomunicaciones y su uso cumplan los criterios establecidos en el párrafo 7, dichas condiciones podrán incluir:
restricciones a la reventa o al uso compartido de tales servicios;
requisitos para usar interfaces técnicas específicas, inclusive protocolos de interfaz, para la interconexión con las redes o los servicios mencionados;
restricciones en la interconexión de circuitos privados, arrendados o propios, con las redes o los servicios mencionados o con circuitos arrendados o propios de otra persona; y
procedimientos para otorgar licencias, permisos, concesiones, registros o notificaciones que, de adoptarse o mantenerse, sean transparentes y que el trámite de las solicitudes se resuelva de manera expedita.

Foreign Ownership Provisions

Artículo 10-03: Trato nacional

Cada Parte otorgará a los prestadores de servicios de la otra Parte un trato no menos favorable que el que conceda, en circunstancias similares, a sus prestadores de servicios.

El trato que otorgue una Parte de conformidad con el párrafo 1 significa, respecto a un estado, un trato no menos favorable que el trato más favorable que ese estado otorgue, en circunstancias similares, a los prestadores de servicios de la Parte de la que formen parte integrante.

Artículo 10-04: Trato de nación más favorecida
Cada Parte otorgará a los prestadores de servicios de la otra Parte un trato no menos favorable que el concedido, en circunstancias similares, a los prestadores de servicios de un país no Parte.

MOVEMENT OF LABOR

Tratado de Libre Comercio entre
el Gobierno de la República de Chile y
el Gobierno de los Estados Unidos Mexicanos
CUARTA PARTE - INVERSION, SERVICIOS Y ASUNTOS RELACIONADOS
Capítulo 13: Entrada temporal de personas de negocios

Artículo 13-01: Definiciones
Para efectos de este capítulo, se entenderá por:
entrada temporal: la entrada de una persona de negocios de una Parte al territorio de la otra, sin la intención de establecer residencia permanente;
nacional: "nacional", tal como se define en el artículo 2-01 (Definiciones de aplicación general), pero no incluye a los residentes permanentes; y
persona de negocios: el nacional que participa en el comercio de bienes o prestación de servicios, o en actividades de inversión.

Artículo 13-02: Principios generales
Además de lo dispuesto en el artículo 1-02 (Objetivos), este capítulo refleja la relación comercial preferente que existe entre las Partes, la conveniencia de facilitar la entrada temporal conforme al principio de reciprocidad y de establecer criterios y procedimientos transparentes para tal efecto. Asimismo, refleja la necesidad de garantizar la seguridad de las fronteras y de proteger la fuerza de trabajo nacional y el empleo permanente en sus respectivos territorios.

Artículo 13-03: Obligaciones generales
Cada Parte aplicará las medidas relativas a las disposiciones de este capítulo de conformidad con el artículo 13-02 y, en particular, las aplicará de manera expedita para evitar demoras o perjuicios indebidos en el comercio de bienes y servicios, o en las actividades de inversión comprendidas en este Tratado.
Las Partes procurarán desarrollar y adoptar criterios, definiciones e interpretaciones comunes para la aplicación de este capítulo.

Artículo 13-04: Autorización de entrada temporal
De acuerdo con las disposiciones de este capítulo, incluso las contenidas en el anexo 13-04 y anexo 13-04(1), cada Parte autorizará la entrada temporal a personas de negocios que cumplan con las demás medidas aplicables, relativas a la salud y seguridad públicas, así como las relacionadas con seguridad nacional.
Una Parte podrá negar la expedición de un documento migratorio que autorice el empleo a una persona de negocios cuando su entrada temporal afecte desfavorablemente:
la solución de cualquier conflicto laboral en curso en el lugar donde esté empleada o vaya a emplearse; o
el empleo de cualquier persona que intervenga en ese conflicto.
Cuando una Parte niegue la expedición de un documento migratorio que autorice empleo, de conformidad con el párrafo 2, esa Parte:
informará por escrito a la persona de negocios afectada las razones de la negativa; y
notificará a la otra Parte sin demora y por escrito, las razones de la negativa.
Cada Parte limitará el importe de los derechos por el trámite de las solicitudes de entrada temporal de personas de negocios al costo aproximado de los servicios prestados.
Artículo 13-05: Suministro de información
Además de lo dispuesto por el artículo 16-03 (Publicación), cada Parte deberá:
proporcionar a la otra Parte el material informativo que le permita conocer las medidas que adopte relativas a este capítulo; y
a más tardar un año después de la fecha de entrada en vigor de este Tratado, preparará, publicará y pondrá a disposición de los interesados, tanto en su propio territorio como en el de la otra Parte, un documento consolidado con material que explique los requisitos para la entrada temporal conforme a las reglas de este capítulo de manera que puedan conocerlos las personas de negocios de la otra Parte.
Cada Parte recopilará, mantendrá y pondrá a disposición de la otra Parte, de conformidad con su respectiva legislación interna, información relativa al otorgamiento de autorizaciones de entrada temporal, de acuerdo con este capítulo, a personas de negocios de la otra Parte a quienes se les haya expedido documentación migratoria. Esta recopilación incluirá información específica referente a cada ocupación, profesión o actividad.

Artículo 13-06: Comité de Entrada Temporal
Las Partes establecen un Comité de Entrada Temporal, integrado por representantes de cada Parte, incluyendo funcionarios de migración, a fin de considerar la implementación y administración de este capítulo, y de cualquier medida de interés mutuo.
El Comité se reunirá cuando menos una vez al año para examinar:
la aplicación y administración de este capítulo;
la elaboración de medidas que faciliten aún más la entrada temporal de personas de negocios conforme al principio de reciprocidad;

la exención de pruebas de certificación laboral o de procedimientos de efecto similar, para el cónyuge de la persona de negocios a la que se haya autorizado la entrada temporal por más de un año conforme a las secciones B, C y D del anexo 13-04; y
las propuestas de modificaciones o adiciones a los anexos 13-04 y 13-04(1), las que, previo consenso, se presentarán a la Comisión conforme a lo establecido en el artículo 17-01(3)(c) (Comisión de Libre Comercio).

Artículo 13-07: Solución de controversias
Una Parte no podrá dar inicio a los procedimientos previstos en el artículo 18-05 (Intervención de la Comisión, buenos oficios, conciliación y mediación) respecto a una negativa de autorización de entrada temporal conforme a este capítulo, ni respecto de ningún caso particular comprendido en el artículo 13-03, salvo que:
el asunto se refiera a una práctica recurrente; y
la persona de negocios afectada haya agotado los recursos administrativos a su alcance respecto a ese asunto en particular.
Los recursos mencionados en el párrafo 1(b) se considerarán agotados cuando la autoridad competente no haya emitido una resolución definitiva en un año, contado a partir del inicio del procedimiento administrativo, y la resolución no se haya demorado por causas imputables a la persona de negocios afectada.

Artículo 13-08: Relación con otros capítulos
Salvo lo dispuesto en este capítulo y en los capítulos 1 (Disposiciones iniciales), 2 (Definiciones generales), 17 (Administración del Tratado), 18 (Solución de controversias) y 20 (Disposiciones finales), y los artículos 16-02 (Centro de información), 16-03 (Publicación), 16-04 (Notificación y suministro de información) y 16-05 (Procedimientos administrativos), ninguna disposición de este Tratado impondrá obligación alguna a las Partes respecto a sus medidas migratorias.

Anexo 13-04: Entrada temporal de personas de negocios
Sección A - Visitantes de Negocios

Cada Parte autorizará la entrada temporal y expedirá documentación comprobatoria a la persona de negocios, que pretenda llevar a cabo alguna actividad de negocios mencionada en el apéndice 13-04(A)(1), sin exigirle autorización de empleo, siempre que, además de cumplir con las medidas migratorias vigentes aplicables a la entrada temporal, exhiba:
prueba de nacionalidad de una Parte;
documentación que acredite que emprenderá tales actividades y señale el propósito de su entrada; y
prueba del carácter internacional de la actividad de negocios que se propone realizar y de que la persona no pretende ingresar en el mercado local de trabajo.

Cada Parte dispondrá que una persona de negocios cumple con los requisitos señalados en el párrafo 1(c), cuando demuestre que:
la fuente principal de remuneración correspondiente a esa actividad se encuentra fuera del territorio de la Parte que autoriza la entrada temporal; y
el lugar principal de sus negocios y donde efectivamente se obtengan la mayor parte de las ganancias se encuentra fuera del territorio de la Parte que autoriza la entrada temporal.

La Parte aceptará normalmente una declaración verbal sobre el lugar principal del negocio y el de obtención de las ganancias. Cuando la Parte requiera comprobación adicional, por lo regular considerará prueba suficiente una carta del empleador donde consten tales circunstancias.

Cada Parte autorizará la entrada temporal a la persona de negocios que pretenda llevar a cabo alguna actividad distinta a las señaladas en el apéndice 13-04(A)(1), sin exigirle autorización de empleo, en términos no menos favorables que los

previstos en las disposiciones vigentes de las medidas señaladas en el apéndice 13-04(A)(3), siempre que dicha persona de negocios cumpla, además, con las medidas migratorias vigentes, aplicables a la entrada temporal.
Ninguna Parte podrá:
exigir como condición para autorizar la entrada temporal conforme al párrafo 1 ó 3, procedimientos previos de aprobación, peticiones, pruebas de certificación laboral u otros procedimientos de efecto similar; o
imponer o mantener ninguna restricción numérica a la entrada temporal de conformidad con el párrafo 1 ó 3.

No obstante lo dispuesto en el párrafo 4, una Parte podrá requerir de la persona de negocios que solicita entrada temporal conforme a esta sección que obtenga, previamente a la entrada, una visa o documento equivalente. Antes de imponer el requisito de visa, la Parte consultará con la otra Parte, con el fin de evitar la aplicación del requisito. Cuando en una Parte exista el requisito de visa, a petición de la otra Parte, consultarán entre ellas con miras a eliminarlo.

Sección B - Comerciantes e inversionistas
Cada Parte autorizará la entrada temporal y expedirá documentación comprobatoria a la persona de negocios que ejerza funciones de supervisión, ejecutivas o que conlleve habilidades esenciales, siempre que la persona cumpla además con las medidas migratorias vigentes, aplicables a la entrada temporal y que pretenda:
llevar a cabo un intercambio comercial cuantioso de bienes o servicios, principalmente entre el territorio de la Parte de la cual es nacional y el territorio de la otra Parte a la cual se solicita la entrada; o
establecer, desarrollar, administrar o prestar asesoría o servicios técnicos claves para administrar una inversión en la cual la persona o su empresa hayan comprometido, o estén en vías de comprometer, un monto importante de capital.

Ninguna Parte podrá:
exigir pruebas de certificación laboral u otros procedimientos de efecto similar, como condición para autorizar la entrada temporal conforme al párrafo 1; ni
imponer ni mantener restricciones numéricas en relación con la entrada temporal conforme al párrafo 1.

No obstante lo dispuesto en el párrafo 2, una Parte podrá requerir de la persona de negocios que solicite entrada temporal conforme a esta sección que obtenga, previamente a la entrada, una visa o documento equivalente.

Sección C - Transferencias de personal dentro de una empresa
Cada Parte autorizará la entrada temporal y expedirá documentación comprobatoria a la persona de negocios empleada por una empresa que pretenda desempeñar funciones gerenciales, ejecutivas o que conlleven conocimientos especializados en esa empresa o en una de sus subsidiarias o filiales, siempre que cumpla con las medidas migratorias vigentes aplicables a la entrada temporal. La Parte podrá exigir que la persona de negocios haya sido empleado de la empresa de manera continua durante un año dentro de los tres años inmediatamente anteriores a la fecha de presentación de la solicitud de admisión.

Ninguna Parte podrá:
exigir pruebas de certificación laboral u otros procedimientos de efecto similar como condición para autorizar la entrada temporal conforme al párrafo 1; ni
imponer ni mantener restricciones numéricas en relación con la entrada temporal conforme al párrafo 1.

No obstante lo dispuesto en el párrafo 2, una Parte podrá requerir de la persona de negocios que solicite entrada temporal conforme a esta sección que obtenga, previamente a la entrada, una visa o documento equivalente. Antes de imponer el requisito de visa, la Parte consultará con la otra Parte, con el fin de evitar la aplicación del requisito. Cuando en una Parte exista el requisito de visa, a petición de la otra Parte, ambas consultarán entre ellas, con miras a eliminarlo.

Sección D - Profesionales
Cada Parte autorizará la entrada temporal y expedirá documentación comprobatoria a la persona de negocios que pretenda llevar a cabo actividades a nivel profesional en el ámbito de una profesión señalada en el apéndice 13-04(D)(1), cuando la persona, además de cumplir con los requisitos migratorios vigentes aplicables a la entrada temporal, exhiba:
prueba de nacionalidad de una Parte; y
documentación que acredite que la persona emprenderá tales actividades y señale el propósito de su entrada.

Ninguna Parte podrá:
exigir procedimientos previos de aprobación, peticiones, pruebas de certificación laboral u otros de efecto similar, como condición para autorizar la entrada temporal conforme al párrafo 1; ni
imponer ni mantener restricciones numéricas en relación con la entrada temporal conforme al párrafo 1.
No obstante lo dispuesto en el párrafo 2, una Parte podrá requerir de la persona de negocios que solicita entrada temporal conforme a esta sección, que obtenga previamente a la entrada una visa o documento equivalente. Antes de imponer el requisito de visa, la Parte consultará con la otra Parte con el fin de evitar la aplicación del requisito. Cuando en una Parte exista el requisito de visa, a petición de la otra Parte, ambas consultarán entre ellas, con miras a eliminarlo.

Anexo 13-04(1): Normas específicas por país para la entrada temporal de personas de negocios
Para efectos del artículo 13-04:
Para el caso de Chile:
se considerará que las personas de negocios que ingresen a Chile bajo cualquiera de las categorías establecidas en el anexo 13-04 realizan actividades que son útiles o ventajosas para el país;
las personas de negocios que ingresen a Chile bajo cualquiera de las categorías establecidas en el anexo 13-04 serán titulares de una visa de residente temporario y podrán renovar esa misma visa por períodos consecutivos en la medida en que se mantengan las condiciones que motivaron su otorgamiento. Dichas personas, no podrán solicitar permanencia definitiva ni cambiar su calidad migratoria, salvo que cumplan con las disposiciones generales de Extranjería (Decreto Ley 1.094 de 1975 y Decreto Supremo 597 de 1984); y
las personas de negocios que ingresen a Chile podrán obtener, además, una cédula de identidad para extranjeros.

Para el caso de México:
se considerará que las personas de negocios que ingresen a México bajo cualquiera de las categorías establecidas en el anexo 13-04 realizan actividades para contribuir al progreso nacional; y
las personas de negocios que ingresen a México bajo cualquiera de las categorías establecidas en el anexo 13-04, lo harán con la calidad y característica migratorias de no inmigrantes visitantes y podrán solicitar las prórrogas correspondientes, en la medida en que subsistan las condiciones que motivaron su internación originaria. Dichas personas podrán solicitar el cambio de su característica migratoria cumpliendo con las disposiciones legales vigentes (Ley General de Población, Artículo 42, fracción III y Artículo 59).

Apéndice 13-04(A)(1): Visitantes de negocios
Definiciones
Para efectos de este apéndice, se entenderá por territorio de la otra Parte, el territorio de la Parte que no sea el de la Parte a la cual se solicite entrada temporal.

Investigación y diseño
Investigadores técnicos, científicos y estadísticos que realicen investigaciones de manera independiente o para una empresa ubicada en el territorio de la otra Parte.

Cultivo, manufactura y producción
Personal de compras y de producción, a nivel gerencial, que lleve a cabo operaciones comerciales para una empresa ubicada en el territorio de la otra Parte.
Propietarios de máquinas cosechadoras que supervisen a un grupo de operarios admitidos de conformidad con las disposiciones vigentes aplicables.

Comercialización
Investigadores y analistas de mercado que efectúen investigaciones o análisis de manera independiente o para una empresa ubicada en el territorio de la otra Parte.
Personal de ferias y de promoción que asista a convenciones comerciales.

Ventas
Representantes y agentes de ventas que tomen pedidos o negocien contratos sobre bienes y servicios para una empresa ubicada en el territorio de la otra Parte, pero que no entreguen los bienes ni presten los servicios.
Compradores que hagan adquisiciones para una empresa ubicada en el territorio de la otra Parte.

Distribución
Agentes de Aduanas que presten servicios de asesoría para facilitar la importación o exportación de bienes.
Servicios posteriores a la venta
Personal de instalación, reparación, mantenimiento y supervisión que cuente con los conocimientos técnicos especializados esenciales para cumplir con la obligación contractual del vendedor; y que preste servicios, o capacite a trabajadores para que presten esos servicios de conformidad con una garantía u otro contrato de servicios relacionados con la venta de equipo o maquinaria comercial o industrial, incluidos los programas de computación comprados a una empresa ubicada fuera del territorio de la Parte a la cual se solicita entrada temporal, durante la vigencia del contrato de garantía o de servicio.

Servicios generales
Profesionales que realicen actividades de negocios a nivel profesional en el ámbito de una profesión señalada en el apéndice 13-04(D)(1).
Personal gerencial y de supervisión que intervenga en operaciones comerciales para una empresa ubicada en el territorio de la otra Parte.
Personal de servicios financieros (agentes de seguros, personal bancario o corredores de inversiones) que intervenga en operaciones comerciales para una empresa ubicada en el territorio de la otra Parte.
Personal de relaciones públicas y de publicidad que brinde asesoría a clientes o que asista o participe en convenciones.
Personal de turismo (agentes de excursiones y de viajes, guías de turistas u operadores de viajes) que asista o participe en convenciones o conduzca alguna excursión que se haya iniciado en el territorio de la otra Parte.
Traductores o intérpretes que presten servicios como empleados de una empresa ubicada en el territorio de la otra Parte.

TRANSPARENCY

Chapter Eighteen Publication, Notification and Administration of Laws

Article 1801: Contacts Points
Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 1802: Publication
1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:
(a) publish in advance any such measure that it proposes to adopt; and
(b) provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

Article 1803: Notification and Provision of Information
1. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 1804: Administrative Proceedings
With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 1802 to particular persons, goods or services of another Party in specific cases that:
(a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
(c) its procedures are in accordance with domestic law.

Article 1805: Review and Appeal
1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:
(a) a reasonable opportunity to support or defend their respective positions; and
(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 1806: Definitions
For purposes of this Chapter:
administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:
(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Party in a specific case; or
(b) a ruling that adjudicates with respect to a particular act or practice.

TECHINCAL STANDARDS

Article 103: Relation to Other Agreements
The Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 908: Conformity Assessment
1. The Parties shall, further to Article 906 and recognizing the existence of substantial differences in the structure, organization and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.

2. Recognizing that it should be to the mutual advantage of the Parties concerned and except as set out in Annex 908.2, each Party shall accredit, approve, license or otherwise recognize conformity assessment bodies in the territory of another Party on terms no less favorable than those accorded to conformity assessment bodies in its territory.

3. Each Party shall, with respect to its conformity assessment procedures:
(a) not adopt or maintain any such procedure that is stricter, nor apply the procedure more strictly, than necessary to give it confidence that a good or a service conforms with an applicable technical regulation or standard, taking into account the risks that non-conformity would create;
(b) initiate and complete the procedure as expeditiously as possible;
(c) in accordance with Article 904(3), undertake processing of applications in non-discriminatory order;
(d) publish the normal processing period for each such procedure or communicate the anticipated processing period to an applicant on request;
(e) ensure that the competent body
(i) on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,
(ii) transmits to the applicant as soon as possible the results of the conformity assessment procedure in a form that is precise and complete so that the applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with the procedure where the applicant so requests, and
(iv) informs the applicant, on request, of the status of the application and the reasons for any delay;
(f) limit the information the applicant is required to supply to that necessary to conduct the procedure and to determine appropriate fees;
(g) accord confidential or proprietary information arising from, or supplied in connection with, the conduct of the procedure for a good of another Party or for a service provided by a person of another Party
(i) the same treatment as that for a good of the Party or a service provided by a person of the Party, and
(ii) in any event, treatment that protects an applicant's legitimate commercial interests to the extent provided under the Party's law;
(h) ensure that any fee it imposes for conducting the procedure is no higher for a good of another Party or a service provider of another Party than is equitable in relation to any such fee imposed for its like goods or service providers or for like goods or service providers of any other country, taking into account communication, transportation and other related costs;
(i) ensure that the location of facilities at which a conformity assessment procedure is conducted does not cause unnecessary inconvenience to an applicant or its agent;
(j) limit the procedure, for a good or service modified subsequent to a determination that the good or service conforms to the applicable technical regulation or standard, to that necessary to determine that the good or service continues to conform to the technical regulation or standard; and
(k) limit any requirement regarding samples of a good to that which is reasonable, and ensure that the selection of samples does not cause unnecessary inconvenience to an applicant or its agent.

4. Each Party shall apply, with such modifications as may be necessary, the relevant provisions of paragraph 3 to its approval procedures.

5. Each Party shall, on request of another Party, take such reasonable measures as may be available to it to facilitate access in its territory for conformity assessment activities.

6. Each Party shall give sympathetic consideration to a request by another Party to negotiate agreements for the mutual recognition of the results of that other Party's conformity assessment procedures.

CHAPTER SEVEN AGRICULTURE AND SANITARY AND PHYTOSANITARY MEASURES

Article 701: Scope and Coverage

1. This Section applies to measures adopted or maintained by a Party relating to agricultural trade.

2. In the event of any inconsistency between this Section and another provision of this Agreement, this Section shall prevail to the extent of the inconsistency.

Article 702: International Obligations

1. Annex 702.1 applies to the Parties specified in that Annex with respect to agricultural trade under certain agreements between them.

2. Prior to adopting pursuant to an intergovernmental commodity agreement, a measure that may affect trade in an agricultural good between the Parties, the Party proposing to adopt the measure shall consult with the other Parties with a view to avoiding nullification or impairment of a concession granted by that Party in its Schedule to Annex 302.2.

3. Annex 702.3 applies to the Parties specified in that Annex with respect to measures adopted or maintained pursuant to an intergovernmental coffee agreement.

Article 703: Market Access
1. The Parties shall work together to improve access to their respective markets through the reduction or elimination of import barriers to trade between them in agricultural goods.

Customs Duties, Quantitative Restrictions, and Agricultural Grading and Marketing Standards

2. Annex 703.2 applies to the Parties specified in that Annex with respect to customs duties and quantitative restrictions, trade in sugar and syrup goods, and agricultural grading and marketing standards.
Special Safeguard Provisions

3. Each Party may, in accordance with its Schedule to Annex 302.2, adopt or maintain a special safeguard in the form of a tariff rate quota on an agricultural good listed in its Section of Annex 703.3. Notwithstanding Article 302(2), a Party may not apply an over-quota tariff rate under a special safeguard that exceeds the lesser of:
(a) the most-favored-nation (MFN) rate as of July 1, 1991; and
(b) the prevailing MFN rate.

4. No Party may, with respect to the same good and the same country, at the same time:
(a) apply an over-quota tariff rate under paragraph 3; and
(b) take an emergency action covered by Chapter Eight (Emergency Action).

Article 704: Domestic Support
The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting and production effects and that domestic support reduction commitments may result from agricultural multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). Accordingly, where a Party supports its agricultural producers, that Party should endeavor to work toward domestic support measures that:
(a) have minimal or no trade distorting or production effects; or
(b) are exempt from any applicable domestic support reduction commitments that may be negotiated under the GATT.
The Parties further recognize that a Party may change its domestic support measures, including those that may be subject to reduction commitments, at the Party's discretion, subject to its rights and obligations under the GATT.

Article 705: Export Subsidies
1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall cooperate in an effort to achieve an agreement under the GATT to eliminate those subsidies.

2. The Parties recognize that export subsidies for agricultural goods may prejudice the interests of importing and exporting Parties and, in particular, may disrupt the markets of importing Parties. Accordingly, in addition to the rights and obligations of the Parties specified in Annex 702.1, the Parties affirm that it is inappropriate for a Party to provide an export subsidy for an agricultural good exported to the territory of another Party where there are no other subsidized imports of that good into the territory of that other Party.

3. Except as provided in Annex 702.1, where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of another Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of any such subsidized imports. If the importing Party adopts the agreed-upon measures,

the exporting Party shall refrain from applying, or immediately cease to apply, any export subsidy to exports of such good to the territory of the importing Party.

4. Except as provided in Annex 702.1, an exporting Party shall deliver written notice to the importing Party at least three days, excluding weekends, prior to adopting an export subsidy measure on an agricultural good exported to the territory of another Party. The exporting Party shall consult with the importing Party within 72 hours of receipt of the importing Party's written request, with a view to eliminating the subsidy or minimizing any adverse impact on the market of the importing Party for that good. The importing Party shall, when requesting consultations with the exporting Party, at the same time, deliver written notice to a third Party of the request. A third Party may request to participate in such consultations.

5. Each Party shall take into account the interests of the other Parties in the use of any export subsidy on an agricultural good, recognizing that such subsidies may have prejudicial effects on the interests of the other Parties.

6. The Parties hereby establish a Working Group on Agricultural Subsidies, comprising representatives of each Party, which shall meet at least semiannually or as the Parties may otherwise agree, to work toward elimination of all export subsidies affecting agricultural trade between the Parties. The functions of the Working Group shall include:
(a) monitoring the volume and price of imports into the territory of any Party of agricultural goods that have benefitted from export subsidies;
(b) providing a forum for the Parties to develop mutually acceptable criteria and procedures for reaching agreement on the limitation or elimination of export subsidies for imports of agricultural goods into the territories of the Parties; and
(c) reporting annually to the Committee on Agricultural Trade, established under Article 706, on the implementation of this Article.

7. Notwithstanding any other provision of this Article:
(a) if the importing and exporting Parties agree to an export subsidy for an agricultural good exported to the territory of the importing Party, the exporting Party or Parties may adopt or maintain such subsidy; and
(b) each Party retains its rights to apply countervailing duties to subsidized imports of agricultural goods from the territory of a Party or non-Party.

Article 706: Committee on Agricultural Trade
1. The Parties hereby establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee's functions shall include:
(a) monitoring and promoting cooperation on the implementation and administration of this Section;
(b) providing a forum for the Parties to consult on issues related to this Section at least semi-annually and as the Parties may otherwise agree; and
(c) reporting annually to the Commission on the implementation of this Section.

Article 707: Advisory Committee on Private Commercial Disputes regarding Agricultural Goods
The Committee shall establish an Advisory Committee on Private Commercial Disputes regarding Agricultural Goods, comprising persons with expertise or experience in the resolution of private commercial disputes in agricultural trade. The Advisory Committee shall report and provide recommendations to the Committee for the development of systems in the territory of each Party to achieve the prompt and effective resolution of such disputes, taking into account any special circumstance, including the perishability of certain agricultural goods.

Article 708: Definitions
For purposes of this Section: agricultural good means a good provided for in any of the following:
Note: For purposes of reference only, descriptions are provided next to the corresponding tariff provision.

(a) Harmonized System (HS) Chapters 1 through 24 (other than a fish or fish product) ; or
(b)

HS subheading	2905.43	manitol
HS subheading	2905.44	sorbitol
HS heading	33.01	essential oils
HS headings	35.01 to 35.05	albuminoidal substances, modified starches, glues
HS subheading	3809.10	finishing agents
HS subheading	3823.60	sorbitol n.e.p.
HS headings	41.01 to 41.03	hides and skins
HS heading	43.01	raw furskins
HS headings	50.01 to 50.03	raw silk and silk waste
HS headings	51.01 to 51.03	wool and animal hair
HS headings	52.01 to 52.03	raw cotton, cotton waste and cotton carded or combed
HS heading	53.01	raw flax
HS heading	53.02	raw hemp

customs duty means "customs duty" as defined in Article 318 (National Treatment and Market Access for Goods - Definitions) ; duty-free means "duty-free" as defined in Article 318; fish or fish product means a fish or crustacean, mollusc or other aquatic invertebrate, marine mammal, or a product thereof provided for in any of the following:
Note: For purposes of reference only, descriptions are provided next to the corresponding tariff provision.

HS Chapter	03	fish and crustaceans, molluscs and other aquatic invertebrates
HS heading	05.07	tortoise-shell, whalebone and whalebone hair and those fish or crustaceans, molluscs or other aquatic invertebrates, marine mammals, and their products within this heading
HS heading	05.08	coral and similar materials
HS heading	05.09	natural sponges of animal origin
HS heading	05.11	products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3
HS heading	15.04	fats and oils and their fractions, of fish or marine mammals
HS heading	16.03	"non-meat" extracts and juices
HS heading	16.04	prepared or preserved fish
HS heading	16.05	prepared preserved crustaceans, molluscs and other aquatic invertebrates;
HS subheading	2301.20	flours, meals, pellets of fish

material means "material" as defined in Article 415 (Rules of Origin - Definitions);

over-quota tariff rate means the rate of customs duty to be applied to quantities in excess of the quantity specified under a tariff rate quota; sugar or syrup good means "sugar or syrup good" as defined in Annex 703.2;
tariff item means a "tariff item" as defined in Annex 401; and tariff rate quota means a mechanism that provides for the application of a customs duty at a certain rate to imports of a particular good up to a specified quantity (in-quota quantity), and at a different rate to imports of that good that exceed that quantity.

Annex 702.1 Incorporation of Trade Provisions
1. Articles 701, 702, 704, 705, 706, 707, 710 and 711 of the Canada - United States Free Trade Agreement, which Articles are hereby incorporated into and made a part of this Agreement, apply as between Canada and the United States.

2. The definitions of the terms specified in Article 711 of the Canada - United States Free Trade Agreement shall apply to the Articles incorporated by paragraph 1.

3. For purposes of this incorporation, any reference to Chapter Eighteen of the Canada - United States Free Trade Agreement shall be deemed to be a reference to Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) of this Agreement.

4. The Parties understand that Article 710 of the Canada - United States Free Trade Agreement incorporates the GATT rights and obligations of Canada and the United States with respect to agricultural, food, beverage and certain related goods, including exemptions by virtue of paragraph (1) (b) of the Protocol of Provisional Application of the GATT and waivers granted under Article XXV of the GATT.

Annex 702.3 Intergovernmental Coffee Agreement
Notwithstanding Article 2101 (General Exceptions), neither Canada nor Mexico may adopt or maintain a measure, pursuant to an intergovernmental coffee agreement, that restricts trade in coffee between them.

Annex 703.2 Market Access
Section A - Mexico and the United States

1. This Section applies only as between Mexico and the United States.

Customs Duties and Quantitative Restrictions

2. With respect to agricultural goods, Article 309(1) and (2) (Import and Export Restrictions) applies only to qualifying goods.

3. Each Party waives its rights under Article XI:2(c) of the GATT, and those rights as incorporated by Article 309, regarding any measure adopted or maintained with respect to the importation of qualifying goods.

4. Except with respect to a good set out in Section B or C of Annex 703.3 or Appendix 703.2.A.4, where a Party applies an over-quota tariff rate to a qualifying good pursuant to a tariff rate quota set out in its Schedule to Annex 302.2, or increases a customs duty for a sugar or syrup good to a rate, in accordance with paragraph 18, that exceeds the rate of customs duty for that good set out in its GATT Schedule of Tariff Concessions as of July 1, 1991, the other Party waives its rights under the GATT with respect to the application of that rate of customs duty.

5. Notwithstanding Article 302(2) (Tariff Elimination), where an agreement resulting from agricultural multilateral trade negotiations under the GATT enters into force with respect to a Party pursuant to which it has agreed to convert a

prohibition or restriction on its importation of an agricultural good into a tariff rate quota or a customs duty, that Party may not apply to such good that is a qualifying good an over-quota tariff rate that is higher than the lower of the over-quota tariff rate set out in:
(a) its Schedule to Annex 302.2, and
(b) that agreement,
and paragraph 4 shall no longer apply to the other Party with respect to that good.

6. Each Party may count the in-quota quantity under a tariff rate quota applied to a qualifying good in accordance with its Schedule to Annex 302.2 toward the satisfaction of commitments regarding an in-quota quantity of a tariff rate quota or level of access under a restriction on the importation of that good:
(a) that have been agreed under the GATT, including as set out in its GATT Schedule of Tariff Concessions; or
(b) undertaken by the Party as a result of any agreement resulting from agricultural multilateral trade negotiations under the GATT.

7. Neither Party may count toward the satisfaction of a commitment regarding an in-quota quantity of a tariff rate quota in its Schedule to Annex 302.2 an agricultural good admitted or entered into a maquiladora or foreign-trade zone and re-exported, including subsequent to processing.

8. The United States shall not adopt or maintain, with respect to the importation of an agricultural qualifying good, any fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act.

9. Neither Party may seek a voluntary restraint agreement from the other Party with respect to the exportation of meat that is a qualifying good.

10. Notwithstanding Chapter Four (Rules of Origin), for purposes of applying a rate of customs duty to a good, the United States may consider as if it were non-originating a good provided for in:
(a) heading 12.02 that is exported from the territory of Mexico, if the good is not wholly obtained in the territory of Mexico;
(b) subheading 2008.11 that is exported from the territory of Mexico, if any material provided for in heading 12.02 used in the production of that good is not wholly obtained in the territory of Mexico; or
(c) U.S. tariff item 1806.10.42 or 2106.90.12 that is exported from the territory of Mexico, if any material provided for in HS subheading 1701.99 used in the production of that good is not a qualifying good.

11. Notwithstanding Chapter Four, for purposes of applying a rate of customs duty to a good, Mexico may consider as if it were non-originating a good provided for in:
(a) HS heading 12.02 that is exported from the territory of the United States, if that good is not wholly obtained in the territory of the United States;
(b) HS subheading 2008.11 that is exported from the territory of the United States, if any material provided for in heading 12.02 used in the production of that good is not wholly obtained in the territory of the United States; or
(c) Mexican tariff item 1806.10.01 (except those with a sugar content less than 90 percent) or 2106.90.05 (except those that contain added flavoring matter) that is exported from the territory of the United States, if any material provided for in HS subheading 1701.99 used in the production of that good is not a qualifying good.
Restriction on Same-Condition Substitution Duty Drawback

12. Beginning on the date of entry into force of this Agreement, neither Mexico nor the United States may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on any agricultural good imported into its territory that is substituted by an identical or similar good that is subsequently exported to the territory of the other Party.

Trade in Sugar and Syrup Goods

13. The Parties shall consult by July 1 of each of the first 14 years beginning with 1994 to determine jointly, in accordance with Appendix 703.2.A.13, whether, and if so, by what quantity either Party:
(a) is projected to be a net surplus producer of sugar in the next marketing year; and
(b) has been a net surplus producer in any marketing year beginning after the date of entry into force of this Agreement, including the current marketing year.

14. For each of the first 14 marketing years beginning after the date of entry into force of this Agreement, each Party shall accord duty-free treatment to a quantity of sugar and syrup goods that are qualifying goods not less than the greatest of:
(a) 7,258 metric tons raw value;
(b) the quota allocated by the United States for a non-Party within the category designated "other specified countries and areas" under paragraph (b) (i) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States; and
(c) subject to paragraph 15, the other Party's projected net production surplus for that marketing year, as determined under paragraph 13 and adjusted in accordance with Appendix 703.2.A.13.

15. Subject to paragraph 16, the duty-free quantity of sugar and syrup goods under paragraph 14(c) shall not exceed the following ceilings:
(a) for each of the first six marketing years, 25,000 metric tons raw value;
(b) for the seventh marketing year, 150,000 metric tons raw value; and
(c) for each of the eighth through 14th marketing years, 110 percent of the previous marketing year's ceiling.

16. Beginning with the seventh marketing year, paragraph 15 shall not apply where, pursuant to paragraph 13, the Parties have determined the exporting Party to be a net surplus producer:
(a) for any two consecutive marketing years beginning after the date of entry into force of this Agreement;
(b) for the previous and current marketing years; or
(c) in the current marketing year and projected it to be a net surplus producer in the next marketing year, unless subsequently the Parties determine that, contrary to the projection, the exporting Party was not a net surplus producer for that year.

17. Mexico shall, beginning no later than six years after the date of entry into force of this Agreement, apply on a most-favored-nation (MFN) basis a tariff rate quota for sugar and syrup goods consisting of rates of customs duties no less than the lesser of the corresponding:
(a) MFN rates of the United States in effect on the date that Mexico commences to apply the tariff rate quota; and
(b) prevailing MFN rates of the United States.

18. When Mexico applies a tariff rate quota under paragraph 17, it shall not apply on a sugar or syrup good that is a qualifying good a rate of customs duty higher than the rate of customs duty applied by the United States on such good.

19. Each Party shall determine the quantity of a sugar or syrup good that is a qualifying good based on the actual weight of such good, converted as appropriate to raw value, without regard to the good's packaging or presentation.

20. If the United States eliminates its tariff rate quota for sugar and syrup goods imported from non-Parties, at such time the United States shall accord to such goods that are qualifying goods the better of the treatment, as determined by Mexico, of:
(a) the treatment provided for in paragraphs 14 through 16; or
(b) the MFN treatment granted by the United States to non-Parties.

21. Except as provided in paragraph 22, Mexico shall not be required to apply the applicable rate of customs duty provided in this Annex or in its Schedule to Annex 302.2 to a sugar or syrup good, or sugar-containing product, that is a qualifying good where the United States has granted or will grant benefits under any reexport program or any like program in connection with the export of the good. The United States shall notify Mexico in writing within two days, excluding weekends, of any export to Mexico of such a good for which the benefits of any reexport program or any other like program have been or will be claimed by the exporter.

22. Notwithstanding any other provision of this Section:
(a) the United States shall accord duty free treatment to imports of
(i) raw sugar that is a qualifying good that will be refined in the territory of the United States and re-exported to the territory of Mexico, and
(ii) refined sugar that is a qualifying good that has been refined from raw sugar produced in, and exported from, the territory of the United States;
(b) Mexico shall accord duty free treatment to imports of
(i) raw sugar that is a qualifying good that will be refined in the territory of Mexico and re-exported to the territory of the United States, and
(ii) refined sugar that is a qualifying good that has been refined from raw sugar produced in, and exported from, the territory of Mexico; and
(c) imports qualifying for duty-free treatment pursuant to subparagraphs (a) and (b) shall not be subject to, or counted under, any tariff rate quota.

Agricultural Grading and Marketing Standards
23. Where a Party adopts or maintains a measure respecting the classification, grading or marketing of a domestic agricultural good, it shall accord treatment to a like qualifying good destined for processing no less favorable than it accords under the measure to the domestic good destined for processing. The importing Party may adopt or maintain measures to ensure that such imported good is processed.

24. Paragraph 23 shall be without prejudice to the rights of either Party under the GATT or under Chapter Three (National Treatment and Market Access for Goods) regarding measures respecting the classification, grading or marketing of an agricultural good, whether or not destined for processing.

25. The Parties hereby establish a Working Group, comprising representatives of Mexico and the United States, which shall meet annually or as otherwise agreed. The Working Group shall review, in coordination with the Committee on Standards Related Measures established under Article 913 (Committee on Standards-Related Measures), the operation of agricultural grade and quality standards as they affect trade between the Parties, and shall resolve issues that may arise regarding the operation of the standards. This Working Group shall report to the Committee on Agricultural Trade established under Article 706.

Definitions

26. For purposes of this Section:
marketing year means a 12-month period beginning October 1;
net production surplus means the quantity by which a Party's domestic production of sugar exceeds its total consumption of sugar during a marketing year, determined in accordance with this Section;
net surplus producer means a Party that has a net production surplus;
plantation white sugar means crystalline sugar that has not been refined and is intended for human consumption without further processing or refining;

qualifying good means an originating good that is an agricultural good, except that in determining whether such good is an originating good, operations performed in or materials obtained from Canada shall be considered as if they were performed in or obtained from a non-Party;
raw value means the equivalent of a quantity of sugar in terms of raw sugar testing 96 degrees by the polariscope, determined as follows:
(a) the raw value of plantation white sugar equals the number of kilograms thereof multiplied by 1.03;
(b) the raw value of liquid sugar and invert sugar equals the number of kilograms of the total sugars thereof multiplied by 1.07; and
(c) the raw value of other imported sugar and syrup goods equals the number of kilograms thereof multiplied by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion) ;
sugar means raw or refined sugar derived directly or indirectly from sugar cane or sugar beets, including liquid refined sugar; and sugar-containing product means a good containing sugar; and
wholly obtained in the territory of means harvested in the territory of.

Section B - Canada and Mexico

1. This Section applies only as between Canada and Mexico.

Customs Duties and Quantitative Restrictions

2. With respect to agricultural goods, Article 309(1) and (2) (Import and Export Restrictions) applies only to qualifying goods.

3. Except with respect to a good set out in Sections A or B of Annex 703.3., where a Party applies an over-quota tariff rate to a qualifying good pursuant to a tariff rate quota set out in its Schedule to Annex 302.2 or increases a customs duty for a sugar or syrup good to a rate that exceeds the rate of customs duty for that good set out in its GATT Schedule of Tariff Concessions as of July 1, 1991, the other Party waives its rights under the GATT with respect to the application of that rate of customs duty.

4. Notwithstanding Article 302(2) (Tariff Elimination), where an agreement resulting from agricultural multilateral trade negotiations under the GATT enters into force with respect to a Party pursuant to which it has agreed to convert a prohibition or restriction on its importation of an agricultural good into a tariff rate quota or a customs duty, that Party may not apply to such good that is a qualifying good an over-quota tariff rate that is higher than the lower of the over-quota tariff rate in:
(a) its Schedule to Annex 302.2, and
(b) that agreement,
and paragraph 3 shall no longer apply to the other Party with respect to that good.

5. Each Party may count the in-quota quantity under a tariff rate quota applied to a qualifying good in accordance with its Schedule to Annex 302.2 toward the satisfaction of commitments regarding an in-quota quantity of a tariff rate quota or level of access under a restriction on the importation of that good:
(a) that have been agreed under the GATT, including as set out in its GATT Schedule of Tariff Concessions; or
(b) undertaken by the Party as a result of any agreement resulting from agricultural multilateral trade negotiations under the GATT.

6. Subject to this Section and for purposes of this Section, Canada and Mexico incorporate their respective rights and obligations with respect to agricultural goods under the GATT and agreements negotiated under the GATT, including their rights and obligations under Article XI of the GATT.

7. Notwithstanding paragraph 6 and Article 309:
(a) the rights and obligations of the Parties under Article XI:2(c) (i) of the GATT and those rights as incorporated by Article 309 shall apply with respect to trade in agricultural goods only to the dairy, poultry and egg goods set out in Appendix 703.2.B.7; and
(b) with respect to such dairy, poultry and egg goods that are qualifying goods, either Party may adopt or maintain a prohibition or restriction or a customs duty on the importation of such good consistent with its rights and obligations under the GATT.

8. Without prejudice to Chapter Eight (Emergency Action), neither Party may seek a voluntary restraint agreement from the other Party with respect to the exportation of a qualifying good.

9. Notwithstanding Chapter Four (Rules of Origin), Mexico may treat a good provided for in Mexican tariff item 1806.10.01 (except those with a sugar content less than 90 percent) or 2106.90.05 (except those that contain added flavoring matter) that is exported from the territory of Canada as non-originating for purposes of applying a rate of customs duty to that good, if any material provided for in HS subheading 1701.99 used in the production of such good is not a qualifying good.

10. Notwithstanding Chapter Four, Canada may treat a good provided for in Canadian tariff item 1806.10.10 or 2106.90.21 that is exported from the territory of Mexico as non-originating for purposes of applying a rate of customs duty to that good, if any material provided for in HS subheading 1701.99 used in the production of such good is not a qualifying good.

Trade in Sugar

11. Mexico shall apply a rate of customs duty equal to its most-favored-nation over-quota tariff rate to a sugar or syrup that is a qualifying good.

12. Canada may apply a rate of customs duty on a sugar or syrup good that is a qualifying good equal to the rate of customs duty applied by Mexico pursuant to paragraph 11.
Agricultural Grading and Marketing Standards

13. The Parties hereby establish a Working Group, comprising representatives of Canada and Mexico, which shall meet annually or as otherwise agreed. The Working Group shall review, in coordination with the Committee on Standards Related Measures established under Article 913 (Committee on Standards-Related Measures), the operation of agricultural grade and quality standards as they affect trade between the Parties, and shall resolve issues that may arise regarding the operation of the standards. This Working Group shall report to the Committee on Agricultural Trade established under Article 706.

Definitions

14. For purposes of this Section:
qualifying good means an originating good that is an agricultural good except that, in determining whether such good is an originating good, operations performed in or material obtained from the United States shall be considered as if they were performed in or obtained from a non-Party.

Section C – Definitions

For purposes of this Annex:

sugar or syrup good means:

(a) for imports into Canada, a good provided for in any of the current tariff items 1701.11.10, 1701.11.20, 1701.11.30, 1701.11.40, 1701.11.50, 1701.12.00, 1701.91.00, 1701.99.00, 1702.90.31, 1702.90.32, 1702.90.33, 1702.90.34, 1702.90.35, 1702.90.36, 1702.90.37, 1702.90.38, 1702.90.40, 1806.10.10 and 2106.90.21 of the Canadian Tariff Schedule;
(b) for imports into Mexico, a good provided for in any of the current tariff items 1701.11.01, 1701.11.99, 1701.12.01, 1701.12.99, 1701.91 (except those that contain added flavoring matter), 1701.99.01, 1701.99.99, 1702.90.01, 1806.10.01 (except those with a sugar content less than 90percent) and 2106.90.05 (except those that contain flavoring matter) of the General Import Duty Act ("Ley del Impuesto General de Importación") ; and
(c) for imports into the United States, a good provided for in any of the current tariff items 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the U.S. Harmonized Tariff Schedule, without regard to the quantity imported.

Article 103: Relation to Other Agreements
The Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party.
In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement

Article 904: Basic Rights and Obligations
Right to Take Standards-Related Measures
1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation. Such measures include those to prohibit the importation of a good of another Party or the provision of a service by a service provider of another Party that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures.
Right to Establish Level of Protection

2. Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907(2).

Article 906: Compatibility and Equivalence
1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.

PART SIX: INTELLECTUAL PROPERTY CHAPTER SEVENTEEN

Article 1701: Nature and Scope of Obligations
1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:
(a) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);
(b) the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);
(c) the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and
(d) the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention).
If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.

3. Annex 1701.3 applies to the Parties specified in that Annex.

Article 1702: More Extensive Protection
A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

Article 1703: National Treatment
1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.

2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:
(a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and
(b) is not applied in a manner that would constitute a disguised restriction on trade.

4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 1704: Control of Abusive or Anticompetitive Practices or Conditions
Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the

relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

Article 1705: Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:
(a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and
(b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.
The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:
(a) the importation into the Party's territory of copies of the work made without the right holder's authorization;
(b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;
(c) the communication of a work to the public; and
(d) the commercial rental of the original or a copy of a computer program.
Subparagraph (d) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:
(a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee; and
(b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

7. Annex 1705.7 applies to the Parties specified in that Annex.

Article 1706: Sound Recordings

1. Each Party shall provide to the producer of a sound recording the right to authorize or prohibit:
(a) the direct or indirect reproduction of the sound recording;

(b) the importation into the Party's territory of copies of the sound recording made without the producer's authorization;
(c) the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and
(d) the commercial rental of the original or a copy of the sound recording, except where expressly otherwise provided in a contract between the producer of the sound recording and the authors of the works fixed therein.
Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.

2. Each Party shall provide a term of protection for sound recordings of at least 50 years from the end of the calendar year in which the fixation was made.

3. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the sound recording and do not unreasonably prejudice the legitimate interests of the right holder.

Article 1707: Protection of Encrypted Program Carrying Satellite Signals
Within one year from the date of entry into force of this Agreement, each Party shall make it:
(a) a criminal offense to manufacture, import, sell, lease or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and
(b) a civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any activity prohibited under subparagraph (a).
Each Party shall provide that any civil offense established under subparagraph (b) shall be actionable by any person that holds an interest in the content of such signal.

Article 1708: Trademarks
1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration, that a sign be visually perceptible.

2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.

4. Each Party shall provide a system for the registration of trademarks, which shall include:
(a) examination of applications;
(b) notice to be given to an applicant of the reasons for the refusal to register a trademark;
(c) a reasonable opportunity for the applicant to respond to the notice;
(d) publication of each trademark either before or promptly after it is registered; and

(e) a reasonable opportunity for interested persons to petition to cancel the registration of a trademark. A Party may provide for a reasonable opportunity for interested persons to oppose the registration of a trademark.

5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

6. Article 6bis of the Paris Convention shall apply, with such modifications as may be necessary, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.

8. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of nonuse only after an uninterrupted period of at least two years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize, as valid reasons for non-use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.

9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.

10. No Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.

11. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs.

12. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.

13. Each Party shall prohibit the registration as a trademark of words, at least in English, French or Spanish, that generically designate goods or services or types of goods or services to which the trademark applies.

14. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bring them into contempt or disrepute.

Article 1709: Patents

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.

2. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

3. A Party may also exclude from patentability:
(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
(b) plants and animals other than microorganisms; and
(c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.
Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1:
(a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine, and
(b) as of July 1, 1991, for any other subject matter,
that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.

5. Each Party shall provide that:
(a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and
(b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.

6. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of other persons.

7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.

8. A Party may revoke a patent only when:
(a) grounds exist that would have justified a refusal to grant the patent; or
(b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.

9. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.

10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:

(a) authorization of such use shall be considered on its individual merits;
(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
(c) the scope and duration of such use shall be limited to the purpose for which it was authorized;
(d) such use shall be non-exclusive;
(e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;
(f) any such use shall be authorized predominantly for the supply of the Party's domestic market;
(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on motivated request, the continued existence of these circumstances;
(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
(i) the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;
(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;
(k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur;
(l) the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.

11. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one of the following situations:
(a) the product obtained by the patented process is new; or
(b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.
In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

12. Each Party shall provide a term of protection for patents of at least 20 years from the date of filing or 17 years from the date of grant. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

Article 1710: Layout Designs of Semiconductor Integrated Circuits
1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on May 26, 1989.

2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:
(a) a protected layout design;
(b) an integrated circuit in which a protected layout design is incorporated; or
(c) an article incorporating such an integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design.

3. No Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design, or any article that incorporates such an integrated circuit, where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.

4. Each Party shall provide that, after the person referred to in paragraph 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.

5. No Party may permit the compulsory licensing of layout designs of integrated circuits.

6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of:
(a) filing of the application for registration; or
(b) the first commercial exploitation of the layout design, wherever in the world it occurs.

7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.

8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.

9. Annex 1710.9 applies to the Parties specified in that Annex.

Article 1711: Trade Secrets
1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:
(a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;
(b) the information has actual or potential commercial value because it is secret; and
(c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.

3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.

4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.
5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

7. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.

Article 1712: Geographical Indications
1. Each Party shall provide, in respect of geographical indications, the legal means for interested persons to prevent:
(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a territory, region or locality other than the true place of origin, in a manner that misleads the public as to the geographical origin of the good;
(b) any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party shall, on its own initiative if its domestic law so permits or at the request of an interested person, refuse to register, or invalidate the registration of, a trademark containing or consisting of a geographical indication with respect to goods that do not originate in the indicated territory, region or locality, if use of the indication in the trademark for such goods is of such a nature as to mislead the public as to the geographical origin of the good.

3. Each Party shall also apply paragraphs 1 and 2 to a geographical indication that, although correctly indicating the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, region or locality.

4. Nothing in this Article shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, either:
(a) for at least 10 years, or
(b) in good faith,
before the date of signature of this Agreement.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, either:

(a) before the date of application of these provisions in that Party, or

(b) before the geographical indication is protected in its Party of origin,

no Party may adopt any measure to implement this Article that prejudices eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.

7. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion, or such name is used in such a manner as to mislead the public.

9. Nothing in this Chapter shall be construed to require a Party to protect a geographical indication that is not protected, or has fallen into disuse, in the Party of origin.

Article 1713: Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that:

(a) designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and

(b) such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.

3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making or selling articles bearing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

4. A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of other persons.

5. Each Party shall provide a term of protection for industrial designs of at least 10 years.

Article 1714: Enforcement of Intellectual Property Rights: General Provisions

1. Each Party shall ensure that enforcement procedures, as specified in this Article and Articles 1715 through 1718, are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies to deter further infringements. Such enforcement procedures shall be applied so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against abuse of the procedures.

2. Each Party shall ensure that its procedures for the enforcement of intellectual property rights are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable timelimits or unwarranted delays.

3. Each Party shall provide that decisions on the merits of a case in judicial and administrative enforcement proceedings shall:

(a) preferably be in writing and preferably state the reasons on which the decisions are based;

(b) be made available at least to the parties in a proceeding without undue delay; and

(c) be based only on evidence in respect of which such parties were offered the opportunity to be heard.

4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, no Party shall be required to provide for judicial review of acquittals in criminal cases.

5. Nothing in this Article or Articles 1715 through 1718 shall be construed to require a Party to establish a judicial system for the enforcement of intellectual property rights distinct from that Party's system for the enforcement of laws in general.

6. For the purposes of Articles 1715 through 1718, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 1715: Specific Procedural and Remedial Aspects of Civil and Administrative Procedures

1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right provided in this Chapter. Each Party shall provide that:

(a) defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims;

(b) parties in a proceeding are allowed to be represented by independent legal counsel;

(c) the procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances;

(d) all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and

(e) the procedures include a means to identify and protect confidential information.

2. Each Party shall provide that its judicial authorities shall have the authority:

(a) where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information;

(b) where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party's control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;

(c) to order a party in a proceeding to desist from an infringement, including to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, which order shall be enforceable at least immediately after customs clearance of such goods;
(d) to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement where the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity;
(e) to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and
(f) to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.

3. With respect to the authority referred to in subparagraph 2(c), no Party shall be obliged to provide such authority in respect of protected subject matter that is acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing in that subject matter would entail the infringement of an intellectual property right.

4. With respect to the authority referred to in subparagraph 2(d), a Party may, at least with respect to copyrighted works and sound recordings, authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not know or had no reasonable grounds to know that it was engaged in an infringing activity.

5. Each Party shall provide that, in order to create an effective deterrent to infringement, its judicial authorities shall have the authority to order that:
(a) goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder or, unless this would be contrary to existing constitutional requirements, destroyed; and
(b) materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.
In considering whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of other persons. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

6. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.

7. Notwithstanding the other provisions of Articles 1714 through 1718, where a Party is sued with respect to an infringement of an intellectual property right as a result of its use of that right or use on its behalf, that Party may limit the remedies available against it to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.

8. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1716: Provisional Measures

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures:
(a) to prevent an infringement of any intellectual property right, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance; and
(b) to preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:
(a) the applicant is the right holder;
(b) the applicant's right is being infringed or such infringement is imminent; and
(c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.
Each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall provide that its judicial authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.

4. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

5. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte basis:
(a) a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;
(b) a defendant shall, on request, have those measures reviewed by that Party's judicial authorities for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.

6. Without prejudice to paragraph 5, each Party shall provide that, on the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:
(a) within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or
(b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

7. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.
8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1717: Criminal Procedures and Penalties

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.
2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.
3. A Party may provide criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.

Article 1718: Enforcement of Intellectual Property Rights at the Border

1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.

2. Each Party shall require any applicant who initiates procedures under paragraph 1 to provide adequate evidence:
(a) to satisfy that Party's competent authorities that, under the domestic laws of the country of importation, there is prima facie an infringement of its intellectual property right; and
(b) to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration.
The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

3. Each Party shall provide that its competent authorities shall have the authority to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

4. Each Party shall provide that, where pursuant to an application under procedures adopted pursuant to this Article, its customs administration suspends the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority, and the period provided for in paragraphs 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.

5. Each Party shall provide that its customs administration shall promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.

6. Each Party shall provide that its customs administration shall release goods from suspension if, within a period not exceeding 10 working days after the applicant under paragraph 1 has been served notice of the suspension, the customs administration has not been informed that:
(a) a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or
(b) a competent authority has taken provisional measures prolonging the suspension,
provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.

7. Each Party shall provide that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

8. Notwithstanding paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, Article 1716(6) shall apply.

9. Each Party shall provide that its competent authorities shall have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraph 6.

10. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate the right holder's claims. Each Party shall also provide that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

11. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:
(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
(b) the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in paragraphs 6 through 8; and
(c) the Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 1715(5). In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

13. A Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a noncommercial nature contained in travellers' personal luggage or sent in small consignments that are not repetitive.
14. Annex 1718.14 applies to the Parties specified in that Annex.

Article 1719: Cooperation and Technical Assistance
1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include the training of personnel.

2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties by January 1, 1994 of contact points in its federal government and shall exchange information concerning trade in infringing goods.

Article 1720: Protection of Existing Subject Matter
1. Except as required under Article 1705(7), this Agreement does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions of this Agreement for the Party in question.

2. Except as otherwise provided for in this Agreement, each Party shall apply this Agreement to all subject matter existing on the date of application of the relevant provisions of this Agreement for the Party in question and that is protected in a Party on such date, or that meets or subsequently meets the criteria for protection under the terms of this Chapter. In respect of this paragraph and paragraphs 3 and 4, a Party's obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention and with respect to the rights of producers of sound recordings in existing sound recordings shall be determined solely under Article 18 of that Convention, as made applicable under this Agreement.

3. Except as required under Article 1705(7), and notwithstanding the first sentence of paragraph 2, no Party may be required to restore protection to subject matter that, on the date of application of the relevant provisions of this Agreement for the Party in question, has fallen into the public domain in its territory.

4. In respect of any acts relating to specific objects embodying protected subject matter that become infringing under the terms of laws in conformity with this Agreement, and that were begun or in respect of which a significant investment was made, before the date of entry into force of this Agreement for that Party, any Party may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Party. In such cases, the Party shall, however, at least provide for payment of equitable remuneration.

5. No Party shall be obliged to apply Article 1705(2) (d) or 1706(1) (d) with respect to originals or copies purchased prior to the date of application of the relevant provisions of this Agreement for that Party.

6. No Party shall be required to apply Article 1709(10), or the requirement in Article 1709(7) that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the text of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations became known.

7. In the case of intellectual property rights for which protection is conditional on registration, applications for protection that are pending on the date of application of the relevant provisions of this Agreement for the Party in question shall be permitted to be amended to claim any enhanced protection provided under this Agreement. Such amendments shall not include new matter.

Article 1721: Definitions
1. For purposes of this Chapter:
confidential information includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law.

2. For purposes of this Agreement:
encrypted program carrying satellite signal means a program carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception, by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a program carried in that signal;

geographical indication means any indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

in a manner contrary to honest commercial practices means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by other persons who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;

intellectual property rights refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;

nationals of another Party means, in respect of the relevant intellectual property right, persons who would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Geneva Convention (1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), the UPOV Convention (1978), the UPOV Convention (1991) or the Treaty on Intellectual Property in Respect of Integrated Circuits, as if each Party were a party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "nationals of another Party" shall be understood to be at least individuals who are citizens or permanent residents of that Party and also includes any other natural person referred to in Annex 201.1 (Country-Specific Definitions);

public includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1) (ii) of the Berne Convention, with respect to dramatic, dramatic musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and

secondary uses of sound recordings means the use directly for broadcasting or for any other public communication of a sound recording.

MARKET ACCESS OF TRADE IN GOODS
AGRICULTURE MARKET ACCESS

Article 301: National Treatment
1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded by such state or province to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 301.3.
Section B – Tariffs

Article 302: Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 302.2.

3. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.

4. Each Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 302.2, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

5. On written request of any Party, a Party applying or intending to apply measures pursuant to paragraph 4 shall consult to review the administration of those measures.

Annex 302.2 Tariff Elimination

1. Except as otherwise provided in a Party's Schedule attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 302(2) :
(a) duties on goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely and such goods shall be duty-free, effective January 1, 1994;
(b) duties on goods provided for in the items in staging category B in a Party's Schedule shall be removed in five equal annual stages beginning on January 1, 1994, and such goods shall be duty-free, effective January 1, 1998;
(c) duties on goods provided for in the items in staging category C in a Party's Schedule shall be removed in 10 equal annual stages beginning on January 1, 1994, and such goods shall be duty-free, effective January 1, 2003;
(d) duties on goods provided for in the items in staging category C+ in a Party's Schedule shall be removed in 15 equal annual stages beginning on January 1, 1994, and such goods shall be duty-free, effective January 1, 2008; and
(e) goods provided for in the items in staging category D in a Party's Schedule shall continue to receive duty-free treatment.

2. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule attached to this Annex. These rates generally reflect the rate of duty in effect on July 1, 1991, including rates under the U.S. Generalized System of Preferences and the General Preferential Tariff of Canada.

3. For the purpose of the elimination of customs duties in accordance with Article 302, interim staged rates shall be rounded down, except as set out in each Party's Schedule attached to this Annex, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest .001 of the official monetary unit of the Party.

4. Canada shall apply a rate of customs duty no higher than the rate applicable under the staging category set out for an item in Annex 401.2, as amended, of the Canada -United States Free Trade Agreement, which Annex is hereby incorporated into and made a part of this Agreement, to an originating good provided that:
(a) notwithstanding any provision in Chapter Four, in determining whether such good is an originating good, operations performed in or materials obtained from Mexico are considered as if they were performed in or obtained from a non-Party; and
(b) any processing that occurs in Mexico after the good would qualify as an originating good in accordance with subparagraph (a) does not increase the transaction value of the good by greater than seven percent.

5. Canada shall apply a rate of customs duty no higher than the rate applicable under the staging category set out for an item in Column I of its Schedule to this Annex to an originating good provided that:
(a) notwithstanding any provision in Chapter Four, in determining whether such good is an originating good, operations performed in or materials obtained from the United States are considered as if they were performed in or obtained from a non-Party; and
(b) any processing that occurs in the United States after the good would qualify as an originating good in accordance with subparagraph (a) does not increase the transaction value of the good by greater than seven percent.

6. Canada shall apply to an originating good to which neither paragraph 4 nor 5 applies a rate of customs duty no higher than the rate indicated for its corresponding item in Column II of its Schedule to this Annex. The rate of customs duty in Column II for such good shall be:
(a) in each year of the staging category indicated in Column I, the higher of
(i) the rate of customs duty under the staging category set out for the item in Annex 401.2, as amended, of the Canada - United States Free Trade Agreement, and
(ii) the General Preferential Tariff rate of customs duty for the item applied on July 1, 1991, reduced in accordance with the applicable staging category set out for the item in Column I of its Schedule to this Annex; or
(b) where specified in Column II of its Schedule to this Annex, the most-favored-nation rate of customs duty for the item applied on July 1, 1991, reduced in accordance with the applicable staging category set out for the item in Column I of its Schedule to this Annex, or reduced in accordance with the applicable staging category otherwise indicated.

7. Paragraphs 4 through 6 and 10 through 13 shall not apply to textile and apparel goods identified in Appendix 1.1 of Annex 300-B (Textiles and Apparel Goods).

8. Paragraphs 4, 5 and 6 shall not apply to agricultural goods as defined in Article 708. For these goods, Canada shall apply the rate applicable under the staging category set out for an item in Annex 401.2, as amended, of the Canada - United States Free Trade Agreement to an originating good when the good qualifies to be marked as a good of the United States pursuant to Annex 311, without regard to whether the good is marked. When an originating good qualifies to be marked as a good of Mexico, pursuant to Annex 311, whether or not the good is marked, Canada shall apply the rate applicable under the staging category set out for an item in Column I of its Schedule to this Annex.

9. As between the United States and Canada, Article 401(7) and (8) of the Canada -United States Free Trade Agreement is hereby incorporated and made a part of this Annex. The term "goods originating in the territory of the United States of America" in Article 401(7) of that agreement shall be determined in accordance with paragraph 4 of this Annex. The term

"goods originating in the territory of Canada" in Article 401(8) of that agreement shall be determined in accordance with paragraph 12 of this Annex.

10. Mexico shall apply a rate of customs duty no higher than the rate applicable under the staging category set out for an item in Column I of its Schedule to this Annex to an originating good when the good qualifies to be marked as a good of the United States, pursuant to Annex 311, without regard to whether the good is marked.

11. Mexico shall apply a rate of customs duty no higher than the rate applicable under the staging category set out for an item in Column II of its Schedule to this Annex to an originating good when the good qualifies to be marked as a good of Canada, pursuant to Annex 311, without regard to whether the good is marked.

12. The United States shall apply a rate of customs duty no higher than the rate applicable under the staging category set out for an item in Annex 401.2, as amended, of the Canada - United States Free Trade Agreement to an originating good when the good qualifies to be marked as a good of Canada pursuant to Annex 311, without regard to whether the good is marked.

13. The United States shall apply a rate of customs duty no higher than the rate applicable under the staging category set out for an item in its Schedule to this Annex to an originating good when the good qualifies to be marked as a good of Mexico pursuant to Annex 311, whether or not the good is marked.

Schedule of Canada
(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)
Schedule of Mexico
(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)
Schedule of the United States
(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

CHAPTER FOURTEEN FINANCIAL SERVICES

Article 1401: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
(a) financial institutions of another Party;
(b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
(c) cross-border trade in financial services.

2. Articles 1109 through 1111, 1113, 1114 and 1211 are hereby incorporated into and made a part of this Chapter. Articles 1115 through 1138 are hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 1109 through 1111, 1113 and 1114, as incorporated into this Chapter.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:
(a) activities or services forming part of a public retirement plan or statutory system of social security; or
(b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1401.4 applies to the Parties specified in that Annex.

Article 1402: Self-Regulatory Organizations
Where a Party requires a financial institution or a cross-border financial service provider of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such self-regulatory organization.

Article 1403: Establishment of Financial Institutions
1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.

2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party's market through the ability of such investor to:
(a) provide in that Party's territory a range of financial services through separate financial institutions as may be required by that Party;
(b) expand geographically in that Party's territory; and
(c) own financial institutions in that Party's territory without being subject to ownership requirements specific to foreign financial institutions.

3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.

4. Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party's territory to establish a financial institution in that territory. A Party may:
(a) require an investor of another Party to incorporate under the Party's law any financial institution it establishes in the Party's territory; or
(b) impose terms and conditions on establishment that are consistent with Article 1405.

5. For purposes of this Article, "investor of another Party" means an investor of another Party engaged in the business of providing financial services in the territory of that Party.

Article 1404: Cross-Border Trade
1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of another Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Party's Schedule to Annex VII.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of another Party located in the territory of that other Party or of another Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may define "doing business" and "solicitation" for purposes of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of another Party and of financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services as set out in Annex 1404.4.

Article 1405: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of another Party and to investments of investors of another Party in financial institutions treatment no less favorable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. Subject to Article 1404, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of another Party treatment no less favorable than that it accords to its own financial service providers, in like circumstances, with respect to the provision of such service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to a measure of any state or province:
(a) in the case of an investor of another Party with an investment in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in a state or province treatment no less favorable than the treatment accorded to an investor of the Party in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in that state or province, in like circumstances; and
(b) in any other case, treatment no less favorable than the most favorable treatment accorded to an investor of the Party in a financial institution, its financial institution or its investment in a financial institution, in like circumstances.
For greater certainty, in the case of an investor of another Party with investments in financial institutions or financial institutions of such investor, located in more than one state or province, the treatment required under subparagraph (a) means:
(c) treatment of the investor that is no less favorable than the most favorable treatment accorded to an investor of the Party with an investment located in such states or provinces, in like circumstances; and
(d) with respect to an investment of the investor in a financial institution or a financial institution of such investor, located in a state or province, treatment no less favorable than that accorded to an investment of an investor of the Party, or a financial institution of such investor, located in that state or province, in like circumstances.

5. A Party's treatment of financial institutions and cross-border financial service providers of another Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

6. A Party's treatment affords equal competitive opportunities if it does not disadvantage financial institutions and cross-border financial services providers of another Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and financial services providers to provide such services, in like circumstances.

7. Differences in market share, profitability or size do not in themselves establish a denial of equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

Article 1406: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions and cross-border financial service providers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of any other Party or of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
(a) accorded unilaterally;
(b) achieved through harmonization or other means; or
(c) based upon an agreement or arrangement with the other Party or non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 1407: New Financial Services and Data Processing
1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

2. Each Party shall permit a financial institution of another Party to transfer information in electronic or other form, into and out of the Party's territory, for data processing where such processing is required in the ordinary course of business of such institution.

Article 1408: Senior Management and Boards of Directors
1. No Party may require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 1409: Reservations and Specific Commitments
1. Articles 1403 through 1408 do not apply to:
(a) any existing non-conforming measure that is maintained by
(i) a Party at the federal level, as set out in Section A of its Schedule to Annex VII,
(ii) a state or province, for the period ending on the date specified in Annex 1409.1 for that state or province, and thereafter as described by the Party in Section A of its Schedule to Annex VII in accordance with Annex 1409.1, or
(iii) a local government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a) ; or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1403 through 1408.

2. Articles 1403 through 1408 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VII.

3. Section C of each Party's Schedule to Annex VII sets out certain specific commitments by that Party.

4. Where a Party has set out a reservation to Article 1102, 1103, 1202 or 1203 in its Schedule to Annex I, II, III or IV, the reservation shall be deemed to constitute a reservation to Article 1405 or 1406, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is covered by this Chapter.

Article 1410: Exceptions

1. Nothing in this Part shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
(a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;
(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and
(c) ensuring the integrity and stability of a Party's financial system.

2. Nothing in this Part applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 1106 (Performance Requirements) with respect to measures covered by Chapter Eleven (Investment) or Article 1109 (Transfers).

3. Article 1405 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 1401(3) (a).

4. Notwithstanding Article 1109(1), (2) and (3), as incorporated into this Chapter, and without limiting the applicability of Article 1109(4), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial services provider to, or for the benefit of, an affiliate of or person related to such institution or provider, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

Article 1411: Transparency

1. In lieu of Article 1802(2) (Publication), each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:
(a) by means of official publication;
(b) in other written form; or
(c) in such other form as permits an interested person to make informed comments on the proposed measure.

2. Each Party's regulatory authorities shall make available to interested persons their requirements for completing applications relating to the provision of financial services.

3. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service provider of another Party relating to the provision of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not

practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

5. Nothing in this Chapter requires a Party to furnish or allow access to:
(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; or
(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises

6. Each Party shall maintain or establish one or more inquiry points no later than 180 days after the date of entry into force of this Agreement, to respond in writing as soon as practicable, to all reasonable inquiries from interested persons regarding measures of general application covered by this Chapter.

Article 1412: Financial Services Committee
1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1412.1.

2. Subject to Article 2001(2) (d) (Free Trade Commission), the Committee shall:
(a) supervise the implementation of this Chapter and its further elaboration;
(b) consider issues regarding financial services that are referred to it by a Party; and
(c) participate in the dispute settlement procedures in accordance with Article 1415.

3. The Committee shall meet annually to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each annual meeting.

Article 1413: Consultations
1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its annual meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 1412.1.

3. A Party may request that regulatory authorities of another Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service providers in the requesting Party's territory.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in another Party's territory or a cross-border financial service provider in another Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Annex 1413.6 shall apply to further consultations and arrangements.

Article 1414: Dispute Settlement
1. Section B of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish by January 1, 1994 and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years, and may be reappointed.

3. Financial services roster members shall:
(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
(b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and
(c) meet the qualifications set out in Article 2009(2) (b) and (c) (Roster).

4. Where a Party claims that a dispute arises under this Chapter, Article 2011 (Panel Selection) shall apply, except that:
(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
(b) in any other case,
(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 2010(1) (Qualifications of Panelists), and
(ii) if the Party complained against invokes Article 1410, the chair of the panel shall meet the qualifications set out in paragraph 3.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:
(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 1415: Investment Disputes in Financial Services
1. Where an investor of another Party submits a claim under Article 1116 or 1117 to arbitration under Section B of Chapter Eleven (Investment - Settlement of Disputes between a Party and an Investor of Another Party) against a Party and the disputing Party invokes Article 1410, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1410 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 1414. Further to Article 2017 (Final Report), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

Article 1416: Definitions

For purposes of this Chapter:

cross-border financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of the Party and that seeks to provide or provides financial services through the cross-border provision of such services;

cross-border provision of a financial service or cross-border trade in financial services means the provision of a financial service:

(a) from the territory of a Party into the territory of another Party,

(b) in the territory of a Party by a person of that Party to a person of another Party, or

(c) by a national of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

financial service means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of that Party;

investment means "investment" as defined in Article 1139 (Investment - Definitions), except that, with respect to "loans" and "debt securities" referred to in that Article:

(a) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

(c) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and

(d) a loan granted by or debt security owned by a cross-border financial service provider, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out in Article 1139;

investor of a Party means a Party or state enterprise thereof, or a person of that Party, that seeks to make, makes, or has made an investment;

new financial service means a financial service not provided in the Party's territory that is provided within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Chapter Two (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

MARKET ACCESS FOR TRADE IN SERVICES
TELECOMMUNICATIONS SERVICES

Article 1304: Standards-Related Measures

1. Further to Article 904(4) (Unnecessary Obstacles), each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:
(a) prevent technical damage to public telecommunications transport networks;
(b) prevent technical interference with, or degradation of, public telecommunications transport services;
(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
(d) prevent billing equipment malfunction; or
(e) ensure users' safety and access to public telecommunications transport networks or services.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. No Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Further to Article 904(3) (Non-Discriminatory Treatment), each Party shall:
(a) ensure that its conformity assessment procedures are transparent and nondiscriminatory and that applications filed thereunder are processed expeditiously;
(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and
(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

7. The Telecommunications Standards Subcommittee established under Article 913(5) (Committee on Standards-Related Measures) shall perform the functions set out in Annex 913.5.a-2.

MARKET ACCESS FOR TRADE IN SERVICES
EXPRESS DELIVERY SERVICES

(BLANK)

MARKET ACCESS FOR TRADE IN SERVICES
MOVEMENT OF LABOR

Chapter Sixteen Temporary Entry for Business Persons
Article 1601: General Principles
Further to Article 102 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 1602: General Obligations
1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 1603: Grant of Temporary Entry
1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1603.
2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:
(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
(b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
(a) inform in writing the business person of the reasons for the refusal; and
(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 1604: Provision of Information
1. Further to Article 1802 (Publication), each Party shall:
(a) provide to the other Parties such materials as will enable them to become acquainted with its measures relating to this Chapter; and
(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territories of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Parties to become acquainted with them.

2. Subject to Annex 1604.2, each Party shall collect and maintain, and make available to the other Parties in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 1605: Working Group
1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials.

2. The Working Group shall meet at least once each year to consider:
(a) the implementation and administration of this Chapter;
(b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
(c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 1603; and
(d) proposed modifications of or additions to this Chapter.

Article 1606: Dispute Settlement
1. A Party may not initiate proceedings under Article 2007 (Commission - Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 1602(1) unless:
(a) the matter involves a pattern of practice; and
(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1) (b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 1607: Relation to Other Chapters
Except for this Chapter, Chapters One (Objectives), Two (General Definitions), Twenty (Institutional Arrangements and Dispute Settlement Procedures) and Twenty-Two (Final Provisions) and Articles 1801 (Contact Points), 1802 (Publication), 1803 (Notification and Provision of Information) and 1804 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Article 1608: Definitions
For purposes of this Chapter:
business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities;
citizen means "citizen" as defined in Annex 1608 for the Parties specified in that Annex;
existing means "existing" as defined in Annex 1608 for the Parties specified in that Annex; and
temporary entry means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

TRANSPARENCY

Article 69 Transparency

1 Each Party shall promptly make public all laws, rules, regulations, judicial decisions and administrative rulings of general application pertaining to trade in goods, services, and investment; shall promptly make available administrative guidelines which significantly affect trade in services covered by its commitments; and shall endeavour to make available promptly administrative guidelines which significantly affect trade in goods and investment.

2 Each Party shall endeavour to provide opportunity for comment by the other Party on its proposed laws, rules, regulations and procedures affecting trade in goods and services and investments if it is of the view that any such proposed laws, rules, regulations and procedures are likely to affect the rights and obligations of either Party under this Agreement.

3 Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application. Each Party shall establish one or more enquiry points to provide specific information upon request on all such measures.

4 In view of the importance of transparency of domestic legislation and procedures affecting trade in goods and the supply of services and in investment to the operation of this Agreement, the Parties shall discuss any concerns which may arise in this area at the reviews referred to in Article 68, in order to address means of overcoming such concerns.

PART 10: DISPUTE SETTLEMENT

Article 58 Scope and Coverage

1 The rules and procedures of this Part shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement, but are without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are party.

2 For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be interpreted in accordance with the general principles of international law and consistently with the objectives set out in Article 1.

Article 59 Consultations

1 Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.

2 Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as a result of failure of the other Party to carry out its obligations under this Agreement or the existence of any other situation may, with a view to achieving satisfactory settlement of the matter, make representations or proposals to the other Party, which shall give due consideration to the representations or proposals made to it.

3 If a request for consultation is made, the Party to which the request is made shall reply to the request within 7 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

4 The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement;
b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

Article 60 Good Offices, Conciliation or Mediation
1 The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time. 2 If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 61.

Article 61 Appointment of Arbitral Tribunals
1 If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal. The request shall include a statement of the claim and the grounds on which it is based.

2 The arbitral tribunal shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request, and the two arbitrators appointed shall designate by common agreement the third arbitrator, who shall chair the tribunal. The latter shall not be a national of either of the Parties, nor have his or her usual place of residence in the territory of one of the Parties, nor be employed by either of them, nor have dealt with the case in any capacity.

3 If the chair of the tribunal has not been designated within 30 days of the appointment of the second arbitrator, the Director-General of the WTO shall at the request of either Party appoint the chair of the arbitral tribunal within a further one month's period.

4 If one of the Parties does not appoint an arbitrator within 30 days of the receipt of the request, the other Party may inform the Director-General of the WTO who shall appoint the chair of the arbitral tribunal within a further 30 days and the chair shall, upon appointment, request the Party which has not appointed an arbitrator to do so within 14 days. If after such period that Party has still not appointed an arbitrator, the chair shall inform the Director-General of the WTO who shall make this appointment within a further 30 days.

5 For the purposes of paragraphs 1, 2, 3 and 4, any person appointed as a member or chair of the arbitral tribunal by either Party or by the Director- General of the WTO must be a well-qualified governmental or nongovernmental individual, and can include persons who have served on or presented a case to a WTO panel, served in the Secretariat of the WTO, taught or published on international trade law or policy, or served as a senior trade policy official of a Member of the WTO. The Parties recognise that the arbitral tribunal should be composed of individuals of relevant technical or legal expertise.

Article 62 Functions of Arbitral Tribunals
1 The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it as it thinks fit. The findings and rulings of the arbitral tribunal shall be binding on the Parties.

2 The arbitral tribunal shall, apart from the matters set out in Article 63, regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

Article 63 Proceedings of Arbitral Tribunals
1 An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it. The reports of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made.

2 The arbitral tribunal shall have the right to seek information and technical advice from any individual or body which it deems appropriate. A Party shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

3 The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions and its initial submission to the public. A Party shall treat as confidential Information submitted by another Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of a Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4 Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

5 At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its point of view.

6 Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to take the floor first to be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

7 The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

8 In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 7 shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

9 The arbitral tribunal shall release to the Parties its findings and rulings in a report on the dispute referred to it within 60 days of its formation. In exceptional cases, the arbitral tribunal may take an additional 10 days to release its report containing its findings and rulings. Within this time period, the arbitral tribunal shall accord adequate opportunity to the Parties to review the report before its release.

Article 64 Termination of Proceedings
The Parties may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

Article 65 Implementation
1 The Party concerned shall comply with the arbitral tribunal's rulings or findings within a reasonable time period. The reasonable period of time shall be mutually determined by the Parties and shall not exceed 12 months from the

date of the arbitral tribunal's report, unless the Party concerned advises the other Party that primary legislation shall be required, in which case the reasonable period of time shall not exceed 15 months from such date.

2 If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance therewith or otherwise comply with the arbitral tribunal's report within the reasonable period of time, that Party shall, if so requested, and not later than the expiry of the reasonable period of time, enter into negotiations with the Party having invoked the dispute settlement procedures with a view to reaching a mutually satisfactory resolution.

3 If no mutually satisfactory resolution has been reached within 20 days, the Party which has invoked the dispute settlement procedures may suspend the application of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute.

4 In considering what benefits to suspend pursuant to paragraph 3:

(i) the Party which has invoked the dispute settlement procedures should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and

(ii) the Party which has invoked the dispute settlement procedures may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

Article 66 Expenses
Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.

PART 4: CUSTOMS PROCEDURES

Article 10 Scope
This Part shall apply to customs procedures required for clearance of goods traded between the two Parties, in accordance with their national laws, rules and regulations.

Article 11 General Provisions
1 The Parties recognise that the objectives of this Agreement may be promoted by the simplification of customs procedures for their bilateral trade.

2 Customs procedures of both Parties shall conform where possible with the standards and recommended practices of the World Customs Organisation.

3 The Customs administrations of both Parties shall actively work together to develop mutually beneficial solutions to minimise risks and to maximize opportunities for facilitating customs clearances. In this regard, the Customs administrations shall consider negotiating an arrangement on detailed areas of future co-operation within 1 year from the date of entry into force of this Agreement.

4 The Customs administrations of both Parties shall periodically review customs procedures with a view to their further simplification.

Article 12 Paperless Trading

With a view to implementing the APEC Blueprint for Action on Electronic Commerce, in particular the Paperless Trading Initiative, the Customs administrations of both Parties shall have in place by the date of entry into force of this Agreement an electronic environment that supports electronic business applications between each Customs administration and its trading community.

Article 13 Risk Management
1 In order to facilitate the clearance of low risk transactions, the Parties agree that customs compliance activities should be focused on high risk goods and travellers. Accordingly, each Party undertakes that compliance activities at the time of entry shall not normally exceed 10 per cent of total customs transactions.

2 The Parties shall not use a threshold value of goods as a sole basis for the selection of goods for customs inspection.

PART 7: TECHNICAL, SANITARY AND PHYTOSANITARY REGULATIONS AND STANDARDS

Article 35 Scope
1 Consistent with the objectives set out in Article 1 and the provisions of this Part, and reflecting the level of confidence that each Party has in the other Party's regulatory outcomes and conformity assessment systems, each Party shall implement the principles of mutual recognition, unilateral recognition or harmonisation that provide the most appropriate or cost-efficient approach to the removal or reduction of technical, sanitary and phytosanitary barriers (hereinafter referred to as "regulatory barriers") to the movement of goods between New Zealand and Singapore for products and/or assessments of manufacturers of products specified in the Product Chapters of Annex 4 on Technical, Sanitary and Phytosanitary Regulations and Standards.

2 "Mutual recognition" means that each Party, on the basis that it is accorded reciprocal treatment by the other Party:

a) accepts the mandatory requirements of the other Party as producing outcomes equivalent to those produced by its own corresponding mandatory requirements i.e. mutual recognition of equivalence of mandatory requirements;

b) accepts the results of conformity assessment activities of the other Party to demonstrate conformity of products and/or manufacturers with its mandatory requirements when the conformity assessment activities are undertaken by conformity assessment bodies designated by the other Party in accordance with this Part i.e. mutual recognition of conformity assessment; or

c) accepts the standards of the other Party as equivalent to its own corresponding standards i.e. mutual recognition of equivalence of standards.

3 "Unilateral recognition" means that a Party on its own accord without requiring reciprocal treatment from the other Party:

a) accepts the mandatory requirements of the other Party as producing outcomes equivalent to those produced by its own corresponding mandatory requirements;

b) accepts the conformity assessment results of the other Party to demonstrate conformity of products and/or manufacturers with its mandatory requirements; or

c) accepts the standards of the other Party as equivalent to its own corresponding standards.

The Product Chapters may provide for unilateral recognition of products and/or

assessments of manufacturers of products which are in compliance with the exporting Party's mandatory requirements and are intended by that Party for export only and not for domestic supply or use.

4 "Harmonisation" means that each Party harmonises its standards and technical regulations with relevant international standards where they exist.

Article 36 Definitions
All general terms concerning standards and conformity assessment used in this Part shall have the meaning given in the definitions contained in the International Organisation for Standardisation/International Electrotechnical Commission (ISO/IEC) Guide 2:1996 "General terms and their definitions concerning standardisation and related activities" published by the ISO and IEC, unless the context otherwise requires. In addition, for the purpose of this Part and Annex 4, unless a more specific meaning is given in a Product Chapter:

a) "accept" means the use of the results of conformity assessment activities as a basis for regulatory actions such as approvals, licences, registrations and post-market assessments of conformity;

b) "acceptance" has an equivalent meaning to "accept";

c) "certification body" means a body, including product or quality systems certification bodies, that may be designated by one Party in accordance with this Part to conduct certification on compliance with the other Party's standards and/or specifications to meet relevant mandatory requirements;

d) "conformity assessment" means any activity concerned with determining directly or indirectly that standards and/or specifications to meet relevant mandatory requirements are fulfilled;

e) "conformity assessment body" means a body that conducts conformity assessment activities and includes test facilities and certification bodies;

f) "designating authority" means a body as specified under this Part, established in the territory of a Party with the necessary authority to designate, monitor, suspend or withdraw designation of conformity assessment bodies within its jurisdiction, unless the Parties agree otherwise to designate conformity assessment bodies within a non-Party;

g) "designation" means the authorisation by a designating authority of a conformity assessment body to undertake specified conformity assessment activities;

h) "designate" has an equivalent meaning to "designation";

i) "mandatory requirements" means the legislative, regulatory and administrative requirements of either Party that are the subject of this Part;

j) "regulatory authority" means an entity that exercises a legal right to control the import, use or supply of products within a Party's territory and may take enforcement action to ensure that products marketed within its territory comply with that Party's mandatory requirements including assessments of manufacturers of products;

k) "Product Chapter" is a chapter of Annex 4 to this Agreement, which specifies the implementation arrangements in respect of a specific product sector;

l) "specifications" means detailed descriptions of requirements other than specified standards;

m) "stipulated requirements" means the criteria set out in a Product Chapter for the designation of conformity assessment bodies;

n) “supply” includes all forms of supply, whether or not for a consideration, and includes but is not limited to:

(i) any transfer of the whole property in any product;
(ii) any transfer of possession of any product, whether or not under an agreement for sale;
(iii) any transfer by way of a gift of a product made in the course or furtherance of any business;
(iv) any transfer by way of a gift to an actual or potential customer of any business of an industrial or commercial sample in a form not ordinarily available for supply to the public;
(v) any transfer by way of barter and exchange;
(vi) any transfer by way of distribution, wholesale, retail, lease, hire or hire-purchase;

o) "test facility" means a facility, including independent laboratories, manufacturers’ own test facilities or government testing bodies, that may be designated by one Party’s designating authority in accordance with this Part to undertake tests on compliance with the other Party's standards and/or specifications to meet mandatory requirements.

Article 37 Establishment of a Work Programme
1 In addition to the Product Chapter on electrical and electronic equipment, the Parties shall:

a) identify and agree on other priority sectors within a period of 6 months from the date of entry into force of this Agreement with a view to removing or reducing regulatory barriers to the movement of goods between the Parties;

b) decide which of the principles relating to mutual recognition, unilateral recognition and harmonisation provides the most cost-efficient approach to the removal or reduction of regulatory barriers in the agreed priority sectors; and

c) establish a work programme to implement the agreed principle.

2 The Parties shall adopt additional Product Chapters following the conclusion of the above process.

Article 38 Mechanisms for Joint Review
As part of the reviews of this Agreement provided for in Article 68, the Parties shall review, at least every 2 years, the implementation of this Part for the purpose of:

a) building confidence in the technical competence of each Party’s regulatory systems and expediting the examination of differences in regulatory requirements and outcomes between the Parties;

b) facilitating the extension of this Part by inter alia:
(i) adding new Product Chapters; and/or
(ii) increasing the scope of existing Product Chapters with the view to establishing mutual recognition of equivalence of mandatory requirements in the Product Chapters; and

c) resolving any questions or disputes relating to the implementation of this Part. If the Parties fail to achieve a mutually satisfactory solution, the matter may be resolved in accordance with Part 10.

Article 39 Origin
For the avoidance of doubt, this Part applies to products and/or assessments of manufacturers of products of the Parties as specified in the Product Chapters regardless of the origin of those products.

Article 40 Mutual Recognition of Equivalence of Mandatory Requirements

Coverage
1 This Article shall apply to products, and laws and regulations relating to products, as may be covered in the Product Chapters.

Applicability
2 Under this Article, mutual recognition shall affect certain laws relating to the products of the Party where the products are intended for supply. Such laws may, unless otherwise provided in the Product Chapters, include:

a) requirements relating to production, composition, quality or performance of a product;

b) requirements that a product satisfy certain standards relating to presentation such as packaging, labelling, date or age stamping; and

c) requirements that products be inspected, passed or similarly dealt with.

3 The laws and requirements of each Party, including but not limited to those that would prevent or restrict or would have the effect of preventing or restricting the supply or use of a product, and how they shall be affected by mutual recognition shall be specified in the relevant Product Chapters.

4 The requirements covered in this Article are not intended to affect the operation of any laws to the extent that these laws regulate:

a) the manner of the supply of products or the manner in which the sellers conduct or are required to conduct their business, so long as those laws apply equally to products produced in or imported into the Parties. These include:

(i) the contractual aspects of the supply of the products;
(ii) the registration of sellers;
(iii) the requirements for business franchise licenses;
(iv) the persons to whom products may or may not be supplied; and
(v) the circumstances in which the products may or may not be supplied;

b) the transportation, storage or handling of products so long as those laws apply equally to products produced in or imported under the laws of the Parties and so long as they are directed at matters affecting, inter alia, human health or safety, animal or plant life or health, or the environment; or
c) the inspection of products so long as such inspection is not a prerequisite to the supply of products and the laws apply equally to products produced in or imported under the laws of the Parties and so long as they are directed at matters affecting, inter alia, human health or safety, animal or plant life or health, or the environment.

5 This Article shall not affect the operation of any laws or regulations prohibiting or restricting the importation of products into one Party from the other Party.

Article 41 Mutual Recognition of Conformity Assessment

Coverage

1 This Article shall apply to products and/or assessments of manufacturers of products, and their mandatory requirements as may be specified in the Product Chapters.

General Obligations

2 Each Party recognises that the conformity assessment bodies designated by the other Party in accordance with this Article are competent to undertake the conformity assessment activities necessary to demonstrate compliance with its mandatory requirements.

3 New Zealand shall accept the results of conformity assessment activities to demonstrate conformity of products and/or manufacturers with its mandatory requirements when the conformity assessment activities are undertaken by conformity assessment bodies designated by Singapore's designating authorities in accordance with this Article.

4 Singapore shall accept the results of conformity assessment activities to demonstrate conformity of products and/or manufacturers with its mandatory requirements when the conformity assessment activities are undertaken by conformity assessment bodies designated by New Zealand's designating authorities in accordance with this Article.

5 This Article shall not require mutual acceptance of the mandatory requirements of each Party, or mutual recognition of the equivalence of such mandatory requirements. The Parties shall, however, give consideration to increasing the degree of harmonisation or equivalence of their mandatory requirements, where appropriate and where consistent with good regulatory practice. Where both Parties agree that the mandatory requirements are harmonised or established as equivalent, the results of conformity assessment that demonstrate compliance with the exporting Party's mandatory requirements shall be accepted as demonstrating compliance with the importing Party's mandatory requirements without the need for further conformity assessment by the importing Party to demonstrate compliance with its own mandatory requirements.

6 Each Party shall, consistent with the relevant provisions of the WTO Agreement on Technical Barriers to Trade and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, use international standards, or the relevant parts of international standards, as a basis for its mandatory requirements where relevant international standards exist or their completion is imminent, except when such international standards or their relevant parts are ineffective or inappropriate.

Designating Authorities

7 The Parties shall ensure that their designating authorities have the necessary authority to designate, monitor, suspend, remove suspension and withdraw designation of the conformity assessment bodies within their respective jurisdictions.

8 Designating authorities shall consult, as necessary, with their counterparts of the other Party to ensure the maintenance of confidence in conformity assessment processes and procedures. This consultation may include joint participation in audits related to conformity assessment activities or other assessments of designated conformity assessment bodies, where such participation is appropriate, technically possible and within reasonable cost.

Designation of Conformity Assessment Bodies

9 In designating conformity assessment bodies, designating authorities shall observe the relevant stipulated requirements.

10 Designating authorities shall specify the scope of the conformity assessment activities for which a conformity assessment body has been designated.

11 Each Party shall give the other Party advance notice of at least 7 days, or such other time period as may be specified in the relevant Product Chapter, of any changes, including suspensions, to their list of designated conformity assessment bodies.

12 The results of conformity assessment activities undertaken by a designated conformity assessment body shall be valid for acceptance for the purposes of paragraphs 3 and 4 of this Article from the date its designation takes effect.

13 Designating authorities shall ensure that the conformity assessment bodies that they designate maintain the necessary technical competence to demonstrate the conformity of a product with the standards and/or specifications to meet mandatory requirements. Conformity assessment bodies of a non-Party shall be acceptable for designation by the Parties where there are no conformity assessment bodies designated in the territory of a Party and the other Party agrees to such designation.

14 Designating authorities shall exchange information concerning the procedures used to ensure that the designated conformity assessment bodies are technically competent and comply with the relevant stipulated requirements.

15 Designating authorities shall ensure that the conformity assessment bodies they designate participate in appropriate proficiency-testing programmes and other comparative reviews such as non government-to-government mutual recognition agreements, so that confidence in their technical competence to undertake the required conformity assessment is maintained.

Suspension and Withdrawal of Conformity Assessment Bodies

16 Each Party shall have the right to challenge a designated conformity assessment body's technical competence and compliance with the relevant stipulated requirements. This right shall be exercised only in exceptional circumstances and where supported by relevant expert analysis or evidence. A Party shall exercise this right by notifying the other Party in writing. Such notification shall be accompanied by the supporting expert analysis or evidence.

17 Except in urgent circumstances, the Parties shall, prior to a challenge under paragraph 16, enter into consultations with a view to seeking a mutually satisfactory solution. In urgent circumstances, consultations shall take place immediately after the right of challenge has been exercised.

18 The consultations referred to in paragraph 17 shall be conducted expeditiously with a view to resolving all issues and seeking a mutually satisfactory solution within the time period specified in the relevant Product Chapter. If this is not achieved, the matter shall be resolved in accordance with the provisions of Part 10.

19 The Product Chapters may provide for additional procedures, such as verification and time limits, to be followed in relation to a challenge.

20 Unless the Parties decide otherwise, the designation of the challenged designated conformity assessment body shall be suspended by the relevant designating authority for the relevant scope of designation from the time its technical competence or compliance is challenged, until either:

a) the challenging Party is satisfied as to the competence and compliance of the conformity assessment body; or

b) the designation of that conformity assessment body has been withdrawn.

The results of conformity assessment activities undertaken by a designated conformity assessment body on or before the date of its suspension or withdrawal shall remain valid for acceptance for the purposes of paragraphs 3 and 4 unless otherwise agreed by the Parties.

Designating authorities shall compare methods used to verify that the designated conformity assessment bodies comply with the relevant stipulated requirements.

Article 42 Mutual Recognition of Equivalence of Standards
Where regulatory compliance is required and where there is equivalence of outcomes, each Party shall accept the standards of the other Party as equivalent to its own corresponding standards.

Article 43 Exchange of Information
1 The Parties shall exchange information concerning their mandatory requirements and conformity assessment procedures.

2 Each Party shall inform the other Party of any proposed changes to its mandatory requirements. Except where considerations of health, safety or environmental protection warrant more urgent action, each Party shall notify the other Party of the changes within the time period set out in the relevant Product Chapters or, if no time period is specified, at least 60 days before the changes enter into force.

3 The Parties may agree on the provision of other information for a specific sector in the Product Chapters.

Article 44 Preservation of Regulatory Authority
1 Each Party retains all authority under its laws to interpret and implement its mandatory requirements.

2 This Part shall not limit the authority of a Party to determine the level of protection it considers necessary for the protection of inter alia human health or safety, animal or plant life or health, or the environment.

3 This Part shall not limit the authority of a Party to take all appropriate measures whenever it ascertains that products may not conform with its mandatory requirements. Such measures may include withdrawing the products from the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, initiating legal proceedings or otherwise preventing the recurrence of such problems, including through a prohibition on imports. If a Party takes such measures, it shall notify the other Party within 15 days of taking the measures, giving its reasons.

Article 45 Confidentiality
1 A Party shall not be required to disclose confidential proprietary information to the other Party except where such disclosure would be necessary for the other Party to demonstrate the technical competence of its designated conformity assessment bodies and conformity with the relevant stipulated requirements.

2 A Party shall, in accordance with its applicable laws, protect the confidentiality of any proprietary information disclosed to it in connection with conformity assessment activities and/or designation procedure.

PART 9: INTELLECTUAL PROPERTY

Article 57 Intellectual Property
The Parties agree that the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights shall govern and apply to all intellectual property issues arising from this Agreement.

PART 3: TRADE IN GOODS

Article 4 Tariffs
Each Party shall eliminate all tariffs on goods originating in the other Party as of the date of entry into force of this Agreement**.** All tariffs on goods originating in either Party shall remain free after that date.

ANNEX 2
SERVICES COMMITMENTS

ANNEX 2.1 Schedule of Commitments: New Zealand
Consistent with the objectives of this Agreement to liberalise trade in services and support the APEC Bogor goals, and in the interests of facilitating a clear understanding of the nature of services trade commitments made under this Agreement for business users and the wider public, New Zealand has adopted a sui generis, plain language, approach to scheduling its services specific commitments. Where further clarification regarding the coverage of a specific services commitment is required - i.e. beyond that provided in the sectoral heading or sub-heading - this is set out clearly in parentheses below in a section entitled "coverage". Unless otherwise specified, there is no residency requirement attached to registration in those services sectors where New Zealand has made specific commitments.

The modes of supply referred to in this schedule are: Cross border mode: the supply of a service from the territory of one Party into the territory of the other Party

Consumption abroad mode: the supply of a service in the territory of one Party to the service consumer of the other Party

Commercial presence mode: the supply of a service by a service supplier of one Party, through commercial presence in the territory of the other Party

Presence of natural persons mode : the supply of a service by a service supplier of one Party, through presence of natural persons of that Party in the territory of the other Party

All Sectors
Presence of Natural Persons
No commitments other than on certain categories of intra-corporate transferees (i.e. natural persons employed by a service supplier of the other Party supplying services through a commercial presence) and business visitors as defined below. For intra-corporate transferees the following conditions apply: Executives and senior managers (i.e. senior employees of an organisation who have been employed for at least 12 months prior to proposed transfer to New Zealand and who are responsible for the entire or a substantial part of an organisation's operations in New Zealand and receive general supervision or direction from higher level executives, board directors or stockholders): an initial period of stay of up to 3 years;

Specialist and/or senior personnel (i.e. persons being transferred to undertake a specific or specialist task at senior level within the company): an initial period of stay of up to 12 months;

Specialist personnel (i.e. natural persons who have been employed by an organisation for at least 12 months prior to proposed transfer to New Zealand and who possess trade, technical or professional skills responsible for a particular aspect of an organisation's operations in New Zealand): an initial period of stay of up to 3 years;

Installers and servicers (i.e. installers and servicers of machinery /equipment where such installation or servicing is a condition of the purchase of the machinery/equipment): for periods of stay not exceeding 3 months in any 12 month period.

For business visitors (i.e. service sellers representing a service supplier of the other Party seeking temporary entry to negotiate for the sale of services where these do not involve direct sales to the general public) the following conditions apply: for a period or periods not exceeding 3 months in any calendar year.

Overseas Investment
National treatment in the establishment of commercial presence is subject to the Overseas Investment Regulations 1995, issued under the Overseas Investment Act 197313. These provide that Overseas Investment Commission (OIC) approval is required for the following investments by an overseas person: 13 The OIC, in determining whether to grant approval, acts in accordance with a screening regime (a non-legally binding description of which is contained in Annex 3 on Investment Limitations) which may be adjusted or replaced from time to time by New Zealand Government legislation, regulation or policy setting.

a) acquisition or control of 25 per cent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets, exceeds NZ$50 million, unless an exemption exists or an authorisation is granted;

b) commencement of business operations or acquisition of an existing business, including business assets, in New Zealand, where the total expenditure to be incurred in setting up or acquiring that business or those assets exceeds NZ$50 million, unless an exemption exists or an authorisation is granted;

c) acquisition, regardless of dollar value, of non-urban land (including scenic reserve land as defined in the above legislation, land over 0.4 hectares on specified off-shore islands and any land on all other islands unless an exemption exists or an authorisation is granted), and any land wherever located worth more than NZ$10 million.

No commitment to national treatment concerning enterprises currently in State ownership.

Sector-Specific Commitments
BUSINESS SERVICES Professional Services Legal Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Accounting, Auditing and Bookkeeping Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Taxation Preparation Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Architectural Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Engineering Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Integrated Engineering Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Urban Planning and Landscape Architectural Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Dental Services
No market access limitations in the consumption abroad or commercial presence modes of supply. No national treatment limitations in the consumption abroad mode of supply. Market access in the cross border mode of supply and national treatment in the cross border, commercial presence and presence of natural persons modes of supply is limited to registered dentists who must satisfy the relevant registration board that they intend to reside and practise in New Zealand.

Veterinary Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Computer And Related Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Research And Development Services
Research and Development Services on Social Sciences and Humanities except Research and Development Services undertaken by State-Funded Tertiary Institutions No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Real Estate Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Rental/Leasing of Equipment Without Crew
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Other Business Services
Advertising Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Market Research and Public Opinion Polling Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Management Consulting Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Services Related to Management Consulting
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Technical Testing and Analysis Services
(Coverage: testing and analysis services of physical properties, testing and analysis services of integrated mechanical and electrical systems) No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Services Incidental to Agriculture, Hunting and Forestry
(Coverage: services incidental to animal husbandry covered in next entry) No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Services Incidental to Animal Husbandry
No market access or national treatment limitations in the cross border or consumption abroad modes of supply. Market access in the commercial presence mode of supply is subject to the Herd Testing Regulations under the Dairy Board Act 1961 which restrict the provision of herd testing services to providers licensed by the New Zealand Dairy Board. The number of licences may be limited.

Services Incidental to Manufacturing
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Placement and Supply Services of Personnel
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Investigation and Security Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Related Scientific and Technical Consulting Services
(Coverage: subsurface surveying services, surface surveying services, and mapmaking services excluding cadastral surveying services) No market access or national treatment limitations in the consumption abroad or commercial presence modes of supply. Supply of services cross border is not technically feasible.

Maintenance and Repair of Equipment (not including Maritime Vessels, Aircraft
or other Transport Equipment)
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Building Cleaning Services
No market access or national treatment limitations in the consumption abroad or commercial presence modes of supply. Supply of services cross border is not technically feasible.

Photographic Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Packaging Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Printing Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Convention Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Translation and Interpretation Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Interior Design Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Exhibition Management Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

COMMUNICATIONS SERVICES
Courier Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Telecommunications Services
No market access limitations in the cross border, consumption abroad or commercial presence modes of supply. No national treatment limitations in the cross border or consumption abroad modes of supply. National treatment in the commercial presence mode of supply is subject, in the case of the Telecom Corporation of New Zealand Limited, to the Articles of Association of that corporation which limit the shareholding by any single overseas entity to 49.9 per cent and require that at least half of the Board of Directors be New Zealand citizens.

Audio-visual Services
Motion Picture Projection Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

CONSTRUCTION AND RELATED ENGINEERING SERVICES
(Coverage: general construction work for buildings, civil engineering, installation

and assembly work, building completion and finishing work, site preparation, new construction (other than pipelines), and maintenance and repair of fixed structures). No market access or national treatment limitations in the consumption abroad or commercial presence modes of supply. Supply of services cross border is not technically feasible.

DISTRIBUTION SERVICES
Commission Agents' and Wholesale Trade Services (Coverage: commission agents' services (excluding agricultural raw materials, live animals, food products, beverages, tobacco and wool), wholesale trade services (excluding agricultural raw materials, live animals, food products, beverages, tobacco and wool))

No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Retail Trade Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Franchising
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

EDUCATION SERVICES
(Coverage: primary, secondary and tertiary education in private institutions) No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply14.

ENVIRONMENTAL SERVICES
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

FINANCIAL SERVICES
Banking and other Financial Services (excluding Insurance) Banking and other financial services (excluding insurance) referred to in these commitments are understood to include:
a) acceptance of deposits and other repayable funds from the public;
b) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
c) financing leasing;
d) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
e) guarantees and commitments;
14 Specific commitments on market access and national treatment through any mode of supply shall not be construed to confer recognition of university degrees for the purposes of admission, registration and qualification for professional practice in New Zealand.
f) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
(i) money market instruments (including cheques, bills, certificates of deposits);
(ii) foreign exchange;
(iii) derivative products including, but not limited to, futures and options;
(iv) exchange rate and interest rate instruments, including products such

as swaps, forward rate agreements;
(v) transferable securities;
(vi) other negotiable instruments and financial assets, including bullion;
g) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
h) money broking;
i) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
j) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
k) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
l) advisory, intermediation and other auxiliary financial services on all the activities listed in paragraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

National treatment in the commercial presence mode of supply is subject to the provisions of the Financial Reporting Act 1993 and the Companies Act 1993. These Acts require overseas companies to prepare financial statements on an annual basis comprising a balance sheet, a profit and loss statement and (if required by an applicable financial reporting standard approved by the Accounting Standards Review Board) a statement of cash flows. The Acts also require such financial statements in relation to an overseas company's New Zealand business. The Acts require the following companies to deliver annual audited financial statements to the Registrar of Companies for registration:

(a) issuers (ie those which have raised investment from the public);
(b) overseas companies;
(c) subsidiaries of companies or bodies corporate incorporated outside New Zealand;
(d) companies in which 25 per cent or more of the shares are held or controlled by:
(i) a subsidiary of a company or body corporate incorporated outside New Zealand or a subsidiary of that subsidiary;
(ii) a company or body corporate incorporated outside New Zealand; or
(iii) a person not ordinarily resident in New Zealand.

Commitments in the cross-border mode of supply for insurance and insurance related services are limited to:
_ insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting them and any liability arising there from, and goods in international transit;
_ reinsurance and retrocession and services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
Commitments in the consumption abroad mode of supply for insurance and insurance–related services are limited to:
_ life insurance;
_ insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the

vehicle transporting them and any liability arising therefrom, and goods in international transit;
_ reinsurance and retrocession and services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
Commitments in the cross-border mode of supply for banking and other financial services (excluding insurance) are limited to:
_ provision and transfer of financial information and financial data processing as referred to in paragraph (k) above, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in paragraph (l) above.
Commitments in the consumption abroad mode of supply for banking and other financial services (excluding insurance) cover:
_ financial services as indicated in paragraphs (a)-(l) above.

Insurance and Insurance-Related Services
For life insurance, reinsurance and retrocession and services auxiliary to insurance, no market access or national treatment limitations in the commercial presence mode of supply. For non-life insurance, market access and national treatment in the cross border mode of service supply is subject to the following limitation:

Compulsory worker's compensation insurance via levies on vehicle owners, employers, employees and the self-employed is provided solely by the Accident Compensation Corporation. For non-life insurance, market access and national treatment in the commercial presence mode of supply is subject to the following limitations:

a) compulsory worker's compensation insurance via levies on vehicle owners, employers, employees and the self-employed is provided solely by the Accident Compensation Corporation;
b) the Earthquake Commission is the sole insurer of residential property disaster insurance for replacement cover up to NZ$100,000 per dwelling and NZ$20,000 on personal property. These amounts may be increased by regulation;
c) the Apple and Pear Marketing Board has the power to organize compulsory hail insurance on behalf of growers and to require them to pay a levy to recover the premium amount of this insurance.

For insurance intermediation services, market access and national treatment in the cross border mode of supply is subject to the following limitation:

Compulsory worker's compensation insurance via levies on vehicle owners, employers, employees and the self-employed is provided solely by the Accident Compensation Corporation. For insurance intermediation services, market access and national treatment in the commercial presence mode of supply is subject to the following limitations:

a) compulsory worker's compensation insurance via levies on vehicle owners, employers, employees and the self-employed is provided solely by the Accident Compensation Corporation;
b) the Apple and Pear Marketing Board and United Wheatgrowers (New Zealand) Ltd have the power to organise compulsory disaster insurance on behalf of growers and to require them to pay a levy to recover the premium amount of this insurance.

No commitment on the marketing and sale of insurance and insurance intermediation services for the following products: agricultural, horticultural and market gardening products, live animals and animal products, meat and meat products, vegetables, fruit, animal and vegetable oils, dairy products, other food products and wool.

Banking and Other Financial Services
No market access or national treatment limitations in the commercial presence mode of supply.

HEALTH RELATED AND SOCIAL SERVICES
Other Human Health Services
Ambulance Services and Residential Health Facilities Services other than Hospital Services

No market access limitations in the consumption abroad or commercial presence modes of supply. Supply of services cross border is not technically feasible.

TOURISM AND TRAVEL-RELATED SERVICES
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

RECREATIONAL, CULTURAL AND SPORTING SERVICES
Archive Services (excluding "Public Archives" as defined in the Archives Act 1957)
No market access or national treatment limitations in the cross-border, consumption abroad or commercial presence modes of supply.

Sports and Recreational Services (excluding Gambling and Betting Services)
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

TRANSPORT SERVICES
Maritime Transport Services

No commitment on apples, pears, kiwifruit, dairy products and hops. International Transport of Freight and Passengers (excluding Cabotage) No market access or national treatment limitations in the cross border or consumption abroad modes of supply. No commitment on the establishment of a registered company for the purpose of operating a fleet under the New Zealand flag in the commercial presence mode of supply. No commitment on ships' crews in the presence of natural persons mode of supply.

Maritime Agency Services, Maritime Brokerage Services and International Towage
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Certain Port Services
(Coverage: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captains' services, navigation aids, emergency repair facilities, anchorage, other shore-based operational services essential to ship operations, including communications, water and electrical supplies)

No commitments on market access or national treatment. No measures shall be applied which deny international maritime transport suppliers reasonable and non-discriminatory access to the above port services.

Air Transport Services
Sales and Marketing of Air Transport Services
Apart from the following products, no market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Computer Reservation System Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Rail Transport
(Coverage: passenger, freight, and pushing and towing services) No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Road Transport
(Coverage: commercial road transport services: passenger, freight (excluding mail), rental and vehicle recovery)
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Pipeline Transport
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

Services Auxiliary to All Modes of Transport

Storage and Warehousing Services
No market access or national treatment limitations in the consumption abroad mode of supply. No market access or national treatment limitations for storage and warehousing services for land and maritime transport in the commercial presence mode of supply. Supply of storage and warehousing services cross border is not technically feasible.

Freight Forwarding Services
No market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply.

MARKET ACCESS FOR TRADE IN SERVICES
EXPRESS DELIVERY

Modes of supply:	1) Cross-border supply 3) Commercial presence	2) Consumption abroad 4) Presence of natural persons	
Sectors	**Limitations on market access**	**Limitations on national treatment**	**Additional commitments**
services (87905 **)	2) None 3) None 4) Unbound except as indicated in the horizontal section	2) None 3) None 4) Unbound	
Interior design services (87907 **)	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound	
2. COMMUNICA-TION SERVICES			
B. Courier services			

Courier services in respect of documents and parcels, including express letters (*) (7512) (*) Express letter service means either a local or an international express letter service or both. This service is	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound	

Modes of supply:	1) Cross-border supply 3) Commercial presence	2) Consumption abroad 4) Presence of natural persons	
Sectors	**Limitations on market access**	**Limitations on national treatment**	**Additional commitments**
administered under the Telecommunica-tions (Class License for Postal Services) Regulations 1997. Express letters must be delivered and received in the same working day, and charges must be more than S$1 per item or 3 times Singapore Post's postage for a 20 gram ordinary letter, whichever is higher. An international express letter must be delivered faster than Singapore Post's published delivery standards for airmail letters and must have a price which is at least 3 times higher than Singapore Post's ordinary 20 gram airmail letter rate to the same country of destination. Incoming international express letters must be delivered by the same			

TRANSPARENCY

Article 14.1 Publication

1. Each Party shall ensure that its laws, regulations, administrative rulings, procedures and policies and any amendment thereto of general application pertaining to trade in goods, services and investment are promptly published or otherwise made available in such a manner as to enable interested persons from the other Party to become acquainted with them.

2. For the purposes of this Chapter, "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and fact situations and that is relevant to the implementation of this Agreement.

3. When possible, a Party shall publish in advance any measure referred to in Paragraph 1 that it proposes to adopt and shall provide, where applicable, interested persons with a reasonable opportunity to comment on such proposed measures.

4. Each Party shall endeavour promptly to provide information and to respond to questions from the other Party pertaining to any measure referred to in Paragraph 1.

Article 14.2 Administrative Proceedings

Each Party shall ensure in its administrative proceedings applying to any measure referred to in Article 14.1 that:

(a) wherever possible, persons of the other Party who are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issues in question;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions before any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 14.3 Review and Appeal

A Party shall ensure that, where warranted, appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for prudential reasons, regarding matters covered by this Chapter, that:

(a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;

(b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;

(c) provide parties to any proceeding with a decision based on the evidence and submissions of record, or, where required by domestic law, the record compiled by the administrative authority; and

(d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

Article 17.1 Scope

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance and settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement.

2. Subject to Paragraph 4, and notwithstanding Paragraph 1, nothing in this Chapter shall affect the rights of the Parties to have recourse to a dispute settlement procedure available under any other international agreement to which they are parties.

3. If a Party decides to have recourse to a dispute settlement procedure under another international agreement, it shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.

4. Once a dispute settlement procedure has been initiated between the Parties with respect to a particular dispute under this Chapter or under any other international agreement to which the Parties are party, that procedure shall be used to the exclusion of any other procedure for that particular dispute. This paragraph does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

5. Paragraph 4 shall not apply where the Parties expressly agree to have recourse to dispute settlement procedures under this Chapter and another international agreement.

6. For the purposes of this Article, a dispute settlement procedure under the WTO Agreement shall be regarded as initiated by a Party's request for a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 17.2 Consultations

1. A Party shall accord adequate opportunity for consultations requested by the other Party with respect to any matter affecting the interpretation, implementation or application of this Agreement.

2. If a request for consultations is made, the Party to which the request is made shall reply to the request within 7 days after the date of its receipt and shall enter into consultations within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations on any matter raised in accordance with this Article.

Article 17.3 Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.

2. Good offices, conciliation or mediation may continue while procedures of an arbitral tribunal established in accordance with this Chapter are in progress.

Article 17.4 Request to Establish an Arbitral Tribunal

1. If the consultations referred to in Article 17.2 fail to settle a dispute within 60 days of the date after receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to establish an arbitral tribunal.

2. The request to establish an arbitral tribunal shall identify:

- (a) the specific measures at issue;
- (b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
- (c) the factual basis for the complaint.

Article 17.5 Establishment of an Arbitral Tribunal

1. An arbitral tribunal shall consist of three members. Each Party shall appoint a member within 30 days after the receipt of the request under Article 17.4. The two members appointed shall, within 30 days after the appointment of the second of them, designate by common agreement the third member.

2. The Parties shall, within 7 days after the date of the designation of the third member, approve or disapprove the appointment of that member, who shall, if approved, chair the tribunal.

3. If within the periods specified in Paragraphs 1 and 2 of this Article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Party, shall be invited to make the necessary appointments.

4. An arbitral tribunal shall be regarded as established on the day on which the appointment of the third member of the tribunal has been approved or agreed by the Parties in accordance with this Article.

5. If a member appointed under this Article resigns or becomes unable to act, a successor member shall be appointed in the same manner as prescribed for the appointment of the member being replaced and the successor shall have all the powers and duties of the member being replaced.

6. A person appointed as a member of an arbitral tribunal:

- (a) shall have expertise or experience in law, international trade, other matters covered by this Agreement or the settlement of disputes arising under international trade agreements;

- (b) shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence; and
- (c) shall be independent of, and not be affiliated with or take instructions from, either Party.

7. A person appointed as chair of an arbitral tribunal shall not be a national of, nor have his or her usual place of residence in the territory of, nor be employed by, either Party nor have dealt with the dispute in any capacity.

Article 17.6 Functions of Arbitral Tribunals

1. An arbitral tribunal established under Article 17.4:

- (a) shall consult the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory settlement of the dispute;
- (b) shall make its award in accordance with this Agreement and applicable rules of international law;
- (c) shall set out, in its award, its findings of law and fact, together with its reasons; and
- (d) may, in addition to its findings of law and fact, include in its award options for the Parties to consider in implementing the award.

2. The award of an arbitral tribunal shall be final and binding on the Parties.

3. An arbitral tribunal shall attempt to make its decision, including its award, by consensus but may also make such decisions by majority vote.

Article 17.7 Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by an arbitral tribunal to appear before it.

2. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall not disclose information submitted by the other Party to an arbitral tribunal which the latter Party has designated as confidential.

3. The Parties shall transmit to the tribunal written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:

- (a) for the Party which requested the establishment of the arbitral tribunal, within 21 days after the date of the establishment of that tribunal; and
- (b) for the other Party, within 21 days after the date of the transmission of the written submission of the Party which requested the establishment of the arbitral tribunal.

4. At its first substantive meeting with the Parties, an arbitral tribunal shall ask the Party which requested the establishment of the tribunal to present its submission. At the same meeting, the arbitral tribunal shall ask the other Party to present its submission.

5. Formal rebuttals shall be made at the second substantive meeting of an arbitral tribunal. The Party which did not request the establishment of the tribunal shall have the right to present its submission first. Before the meeting, the Parties shall submit written rebuttals to the tribunal.

6. An arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting or in writing. The responding Party shall respond fully and without undue delay.

7. The Parties shall make available to an arbitral tribunal a written version of their oral statements.

8. The submissions, rebuttals and statements referred to in Paragraphs 4 to 6 shall be made in the presence of the Parties. Each Party's written submissions, including any comments on the draft award made in accordance with Article 17.9 (2), written versions of oral statements and responses to questions put by an arbitral tribunal, shall be made available to the other Party.

9. An arbitral tribunal shall have no ex parte communications concerning a dispute it is considering.

10. At the request of a Party, or on its own initiative, an arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. Where information or technical advice is sought by an arbitral tribunal, the Parties may set terms and conditions on the provision of confidential information and technical advice. The arbitral tribunal shall provide the Parties with a copy of the information or technical advice received and an opportunity to provide comments. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice. This Paragraph does not apply to information and technical advice provided by any person or body as part of the submissions referred to in Paragraphs 4 to 6.

11. An arbitral tribunal shall, in consultation with the Parties, regulate its own procedures governing the rights of Parties to be heard and its own deliberations where such procedures are not otherwise set out in this Chapter.

Article 17.8 Suspension or Termination of Proceedings

1. Where the Parties agree, an arbitral tribunal may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitral tribunal has been suspended for more than 12 months, the tribunal's authority for considering the dispute shall lapse unless the Parties agree otherwise.

2. The Parties may agree at any time to terminate the proceedings of an arbitral tribunal established under this Agreement by jointly notifying the chair of that arbitral tribunal.

3. An arbitral tribunal may, at any stage of the proceedings prior to release of its final award, propose that the Parties seek to settle the dispute amicably.

Article 17.9 Awards of Arbitral Tribunals

1. Unless the Parties otherwise agree, an arbitral tribunal shall base its award on the submissions and arguments of the Parties and on any information it has obtained in accordance with Article 17.7 (10).

2. An arbitral tribunal shall prepare a draft award and accord adequate opportunity for the Parties to review this draft. The Parties may submit to the tribunal written comments on the draft award within 14 days after the date of its receipt. The tribunal shall consider any comments received from the Parties in finalising its award.

3. An arbitral tribunal shall release to the Parties its final award on a dispute within 120 days after the date of its establishment. If the tribunal considers it cannot release its final award within 120 days, it shall inform the Parties in writing of the reasons for the delay, together with an estimate of the period within which it will issue its award.

4. The final award of an arbitral tribunal shall become a public document within 10 days of its release to the Parties.

Article 17.10 Implementation

1. The Parties shall promptly comply with an award of an arbitral tribunal.

2. A Party shall notify the other Party in writing of any action it proposes to take to implement an award of an arbitral tribunal within 30 days after the date of the receipt of the final award by the Parties.

3. If a Party considers that prompt compliance with an award of an arbitral tribunal is impracticable, or if a Party which requested the establishment of an arbitral tribunal considers that an action proposed or subsequently taken by the other Party does not implement the award of the tribunal, the Parties shall immediately enter into consultations with a view to developing a mutually acceptable resolution, such as compensation or any alternative arrangement and agreeing on a reasonable period to implement any such resolution. Compensation and any alternative arrangement are temporary measures, neither of which is preferred to full implementation of the original award.

Article 17.11 Compensation and Suspension of Benefits

1. If:

- (a) the Party which requested the establishment of an arbitral tribunal has not received any notice from the other Party under Article 17.10 (2); or
- (b) the Parties are unable to agree on a mutually acceptable resolution under Article 17.10 (3) within 30 days of the commencement of consultations under Article 17.10 (3); or
- (c) the Parties have agreed on a mutually acceptable resolution under Article 17.10 (3) and the Party which requested the establishment of the arbitral tribunal considers that the other Party has failed to observe the terms of such agreement,

the Party which requested the establishment of an arbitral tribunal may at any time thereafter provide written notice to the other Party that it intends to suspend the application of benefits of equivalent effect to the non-conformity found by the tribunal. The notice shall specify the level of benefits that the Party proposes to suspend. The Party which requested the establishment of an arbitral tribunal may begin suspending benefits 30 days after the date on which it provides notice to the other Party.

2. In considering what benefits to suspend under this Article:

- (a) the Party which requested the establishment of an arbitral tribunal shall first seek to suspend the application of benefits in the same sector or sectors as affected by the matter that the tribunal has found to be inconsistent with this Agreement;
- (b) the Party which requested the establishment of an arbitral tribunal may suspend the application of benefits in other sectors if it considers that it is not practicable or effective to suspend the application of benefits in the same sector; and
- (c) the Party which requested the establishment of the arbitral tribunal shall aim to ensure that the level of suspension of benefits is of equivalent effect to the non-conformity found by the tribunal.

Any suspension of benefits under this Article shall be temporary and shall only be applied until such time as the Party that must implement an arbitral tribunal's award has done so, or until a mutually satisfactory solution is reached.

3. If the Party complained against considers that:

- (a) the level of benefits that the other Party has proposed to suspend under Paragraph 2 is excessive; or

- (b) it has eliminated the non-conformity found by the arbitral tribunal,

it may, within 30 days after the other Party provides notice under Paragraph 1, request that the tribunal be reconvened to consider this matter. The Party complained against shall deliver its request in writing to the other Party. The tribunal shall reconvene within 30 days after delivery of the request to the other Party and shall present its determination to the Parties within 90 days after it reconvenes. If the tribunal determines that the level of benefits proposed to be or actually suspended is excessive, it shall determine the level of benefits it considers to be of equivalent effect to the non-conformity found by the tribunal, adjusted to reflect any loss sustained by a Party as a result of excessive suspension.

4. The tribunal's award under Paragraph 3 shall be final and binding on the Parties.

Article 17.12 Expenses

Each Party shall bear the costs of its appointed member and its own expenses. The costs of the chair of an arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

CUSTOMS PROCEDURES/TRADE FACILITATION

Article 3.1 Objectives

The objectives of this Chapter are to:

(a) simplify and harmonise customs procedures of the Parties;

(b) ensure predictability, consistency and transparency in the application of customs laws and the administrative policies of the Parties;

(c) promote efficient and economical customs border administration and the expeditious clearance of goods; and

(d) facilitate trade between the Parties and promote the security of such trade.

Article 3.2 Scope

This Chapter shall apply, in accordance with the Parties' international obligations and respective laws, rules and regulations, to customs procedures related to the clearance of goods traded between the Parties.

Article 3.3 Definitions

For the purposes of this Chapter:

(a) **"craft"** includes any aircraft, ship, boat or other vehicle used or capable of being used for the carriage or transportation of persons or goods, or both, by air, land, water or over or under water;

(b) **"customs administration"** means:
(i) in relation to New Zealand, the New Zealand Customs Service and
(ii) in relation to Thailand, the Customs Department of the Kingdom of Thailand

(c) **"customs law"** means the statutory and regulatory provisions relating to the importation, exportation, movement and storage of goods, the administration and enforcement of which are specially charged to the customs administration of a Party;

(d) **"customs offence"** means any breach or attempted breach of customs law;

(e) **"customs procedures"** means the treatment applied by the customs administration of each Party to goods, persons and craft that are subject to customs control.

Article 3.4 General Provisions

1. The Parties recognise that the objectives of this Agreement may be promoted by the application of common, simplified customs procedures, and cooperation between the customs administrations.

2. To give effect to the provisions of this Chapter and Chapter 4 of this Agreement the customs administrations shall enter into a Cooperative Arrangement to take effect concurrently with the entry into force of this Agreement.

3. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of that information. The Parties shall not use or disclose such information except with the written consent of the requested Party or to the extent that the information may be required to be disclosed for law enforcement purposes or in the context of judicial proceedings.

4. Nothing in this Chapter shall be taken to require a Party to furnish or allow access to information the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its laws, rules or regulations;

(b) be contrary to its laws, rules or regulations to protect personal privacy or the financial affairs and accounts of individual customers of financial institutions; or

(c) impede law enforcement.

Article 3.5 Customs Procedures and Facilitation

1. Customs procedures of the Parties shall, where possible and to the extent permitted by their respective laws, rules or regulations, conform with the standards and recommended practices of the World Customs Organisation, including the principles of the International Convention on the Simplification and Harmonisation of Customs Procedures 1973.

2. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade.

3. The customs administrations of both Parties shall periodically review their customs procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate bilateral trade.

4. In respect of consignments for which immediate clearance is requested, the Parties shall, insofar as permitted by their laws, follow the guidelines of the World Customs Organisation.

Article 3.6 Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

Article 3.7 Customs Cooperation

1. The Parties shall, through their customs administrations and in accordance with this Chapter and the Cooperative Arrangement referred to in Article 3.4 (2), cooperate in achieving compliance with their customs laws, in accordance with their international obligations governing the importation and exportation of goods, relating to:

(a) the implementation and operation of this Agreement;

(b) security of trade between the Parties;

(c) restrictions and prohibitions on imports and exports; and

(d) such other issues as the Parties may determine.

2. To the extent permitted by their laws, regulations and policies, the customs administrations of both Parties shall provide each other with mutual assistance in order to prevent breaches of customs law and for the protection of the economic, fiscal, social and commercial interests of their respective countries, including ensuring appropriate and efficient customs duty collection.

3. Each Party shall endeavour to provide the other Party with advance notice of any significant modification of laws, regulations or policies governing importations that are likely to substantially affect the operation of this Agreement.

Article 3.8 Review and Appeal

1. Each Party shall, with regard to customs administrative rulings, determinations or decisions, provide the right of appeal, without penalty, by the importer, exporter or other person affected by that administrative ruling, determination or decision.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 3.9 Advance Rulings

1. Subject to Paragraph 2, each Party shall provide in writing advance rulings in respect of the classification of goods to a person described in Sub-paragraph 2(a) (hereinafter referred to as "advance rulings").

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

(a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of goods in question;

(b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;

(c) provide that its customs administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;

(d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and

(e) provide that an advance ruling be issued to the applicant expeditiously, or in any case within 30 working days of the receipt of all necessary information.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with Sub-paragraph 2(c) is not provided within the specified period.

4. Subject to Paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within three years of the date of that ruling, or such other period as required by that Party's laws, regulations or policies.

5. A Party may modify or revoke an advance ruling upon a determination that the advance ruling was based on an error of fact or law (including human error), or if there is a change in:

(a) domestic law consistent with this Agreement;

(b) a material factor; or

(c) the circumstances on which the ruling is based.

6. Any fees charged for advance rulings shall not exceed the approximate cost of the services rendered in providing the advance ruling.

Article 3.10 Early Resolution of Differences between the Parties

1. Where significant differences between the customs administrations of the Parties arise with respect to the application of the provisions of this Chapter and Chapter 4 of this Agreement, either customs administration may request to consult with the other customs administration to resolve such differences. The modalities of such consultation shall be agreed between the customs administrations.

2. Consultations under this Article are without prejudice to the rights of the Parties under Chapter 17 of this Agreement or under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 3.11 Security of Trade and Repression of Terrorist Activity

In the event either Party desires to adopt procedures to ensure the security of trade in goods and/or the movement of craft between the Parties, the customs administrations shall consult with a view to agreeing procedures to secure such trade and/or movement of craft.

Article 3.12 Paperless Trading and Use of Automated Systems

1. The customs administrations of both Parties, in implementing initiatives that provide for the use of paperless trading, shall take into account the methods agreed in APEC and the World Customs Organisation.

2. The customs administrations of the Parties shall, as soon as practicable, adopt electronic procedures for all reporting requirements, consistent with the provisions of Chapter 10 of this Agreement.

Article 3.13 Risk Management

1. The Parties shall administer customs procedures at their respective borders so as to facilitate the clearance of low-risk goods and focus on high-risk goods.

2. The Parties shall apply and develop further risk management techniques in the performance of their customs procedures.

Article 3.14 Publication and Enquiry Points

1. Each Party shall publish on the Internet or in print form all statutory and regulatory provisions and any administrative procedures applicable or enforceable by its customs administration.

2. Each Party shall designate one or more enquiry points to address enquiries from interested persons of the other Party concerning customs matters, and shall make available on the Internet information concerning procedures for making such enquiries

TECHINCAL STANDARDS

Article 7.3 Scope and Obligations

1. This Chapter applies to standards, technical regulations and conformity assessment procedures that may, directly or indirectly, affect the sale of goods between the Parties other than those that:

- (a) relate to government procurement; and
- (b) are sanitary or phytosanitary measures as defined in Annex A, paragraph 1 of the SPS Agreement.

2. This Chapter shall apply to food standards which are not SPS measures. Notwithstanding this, Articles 6.5 to 6.10 of Chapter 6 of this Agreement shall apply to food standards which are not SPS measures.

3. The Parties affirm with respect to each other their existing rights and obligations relating to technical regulations under the TBT Agreement.

4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations and the conditions set out in the TBT Agreement:

- (a) technical regulations necessary to ensure its national security requirements; and
- (b) technical regulations necessary for the protection of human health or safety, animal or plant life or health, or the environment, or for the prevention of deceptive practices.

5. Each Party shall retain all authority under its legislation to take appropriate and timely measures for goods which pose an immediate risk to health, safety or the environment.

6. The Parties affirm their intention to adopt and to apply, with such modifications as may be necessary, the principles set out in the APEC Information Notes on Good Regulatory Practice in Technical Regulation with respect to conformity assessment and approval procedures in meeting their international obligations under the TBT Agreement.

Article 7.6 Conformity Assessment Procedures

1. The Parties shall, recognising the existence of differences in the structure, organisation and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.

2. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures.

3. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of the other Party, provided that it is satisfied that the procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.

4. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult, as appropriate, on such matters as the technical competence of the conformity assessment bodies involved.

5. A Party shall, on the request of the other Party, explain its reasons where it does not accept the results of a conformity assessment procedure conducted in the territory of the other Party.

6. A Party shall, on the request of the other Party, take such reasonable measures as may be available to it to facilitate access in its territory for conducting conformity assessment procedures.

7. A Party shall give appropriate consideration to a request by the other Party to negotiate Annexes to this Chapter and Implementing Arrangements for the recognition of the results of that other Party's conformity assessment procedures in agreed sectors.

8. The Parties shall utilise to the maximum extent possible existing mutual recognition arrangements in relation to the acceptance of conformity assessment procedures.

9. The Parties shall give appropriate consideration, where possible, to participation in any future mutual recognition arrangements developed within APEC.

Article 6.1 Objectives

The objectives of this Chapter are to:

(a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organisations;

(b) facilitate trade in all products between the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the territory of the Parties;

(c) provide a means to strengthen cooperation and consultation between the Parties on bilateral sanitary and phytosanitary matters and on food standards, including through the development of implementing arrangements on equivalence and other agreed matters of interest to the Parties; and

(d) strengthen collaboration between the Parties in relevant international bodies implementing agreements or developing international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

Article 6.2 Scope

1. This Chapter shall apply to all sanitary or phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties, in particular involving agricultural and food products.

2. This Chapter shall apply to food standards which are SPS measures and Chapter 7 shall apply to food standards which are not SPS measures. Notwithstanding the above, Articles 6.5 to 6.10 of this Chapter shall apply to all food standards.

Article 6.3 Definitions

For the purposes of this Chapter:

(a) "appropriate level of sanitary or phytosanitary protection" shall have the same meaning as in Annex A, paragraph 5 of the SPS Agreement;

(b) "relevant international organisations" include the Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (OIE), and the relevant international and regional organisations operating within the framework of the International Plant Protection Convention (IPPC);

(c) "sanitary or phytosanitary measure" (SPS measure) shall have the same meaning as in Annex A, paragraph 1 of the SPS Agreement;

(d) "urgent problem of health protection" means a situation where there is a clearly identified risk of serious health effects on human, animal or plant life or health arising from the importation of a product or products into the customs territory of a Party.

Article 6.4 International Obligations

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement.

2. Nothing in this Chapter shall prevent a Party from adopting, implementing or maintaining measures necessary to achieve its appropriate level of protection for human, animal or plant life or health consistent with its rights and obligations under the SPS Agreement.

Article 6.5 Competent Authorities and Contact Points

1. Recognising the importance of close and effective working relationships between the Parties in giving effect to the objectives of this Chapter, the Parties shall promote communication to enhance present and future relationships between their competent authorities.

2. The competent authorities for matters within the scope of this Chapter as at the date of entry into force of this Agreement are:

- (a) in the case of New Zealand, the Ministry of Agriculture and Forestry and the New Zealand Food Safety Authority; and
- (b) in the case of Thailand, the Ministry of Agriculture and Cooperatives.

3. The competent authorities shall designate contact points for communication on all matters arising under this Chapter. Each Party shall notify the other promptly of any changes to the competent authorities or contact points. As at the date of entry into force of this Agreement, the contact point for Thailand shall be the National Bureau of Agricultural Commodity and Food Standards; and for New Zealand, the contact points shall be the New Zealand Food Safety Authority and Biosecurity New Zealand.

4. Each Party shall provide notice to the contact points of the other Party of new or proposed changes to its SPS measures and food standards, as far in advance as practicable before the changes come into effect, where these are likely to affect, directly or indirectly, trade between the Parties.

Article 6.6 Urgent Problems of Health Protection

A Party may, in response to an urgent problem of health protection which arises or threatens to arise, take measures necessary for the protection of human, animal or plant life or health. In such circumstances, the Party shall provide notice to the contact points of the other Party of such changes to its SPS measures and food standards within 1 day of the changes coming into effect, where these are likely to affect, directly or indirectly, trade between the Parties. The Parties shall consult expeditiously regarding the situation with a view to minimising disruption to trade. The Parties shall take due account of any information provided through such consultations.

Article 6.7 Situations of Non-Compliance

The Parties shall cooperate where there is a notification of non-compliance of imported consignments for products subject to SPS measures or food standard requirements, drawing on the guidelines of relevant international organisations where available. In particular, where such non-compliance arises, the importing Party shall notify as soon as possible the exporting Party of the consignment details. Unless specifically required by its laws, regulations or policies, the importing Party shall avoid suspending trade based on one shipment, but in the first instance shall contact the exporting Party to ascertain how the problem has occurred. The Parties shall consult on what remedial action might be taken by the exporting Party to ensure that further shipments are not affected.

Article 6.8 Joint SPS Committee

The Parties shall establish a Joint SPS Committee consisting of representatives of the Parties. The Joint SPS Committee shall consider any matters relating to the implementation of this Chapter, and shall:

(a) establish technical working groups, as required;

(b) meet in person within one year of the entry into force of this Agreement and at least annually thereafter or as mutually agreed by the Parties. It may meet via teleconference, video conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence;

(c) initiate, develop and review implementing arrangements on technical matters including harmonisation, equivalence, control, inspection and approval procedures which further elaborate the provisions of this Chapter in order to facilitate trade between the Parties, particularly in agricultural and food products; and

(d) review and assess progress of each Party's priority market access interests, and, where agreed as necessary, amend implementing arrangements.

Article 6.9 Technical Working Groups

Technical working groups may consist of expert-level representatives of the Parties as agreed, and shall identify, address and attempt to resolve technical and scientific issues arising from this Chapter. In cases where these issues are not able to be resolved at the level of the established technical working group, they shall be reported to the Joint SPS Committee in order to reach a mutually acceptable resolution with the least disruption to trade.

Article 6.10 Consultations

1. In the event that a Party considers that an SPS measure or food standard affecting trade between it and the other Party warrants consultations, it may, through the contact point, request that consultations be held. The other Party shall respond promptly to any request for consultations.

2. The consultations shall be held within 21 days of the request, unless the Parties determine otherwise, and may be conducted via teleconference, video conference, or through any other means, as mutually determined by the Parties.

3. The purpose of such consultations is to share information and increase mutual understanding, with a view to resolving any concerns about the specific SPS measure or food standard that is the subject of the consultations, consistent with the rights and obligations of the Parties under the WTO Agreement.

Article 6.11 Other Cooperation

The Parties shall explore opportunities for further cooperation, collaboration, and information exchange on SPS matters including technical assistance at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter.

Article 6.12 Confidentiality

Information exchanged under this Chapter may include non-public information exempt from public disclosure under the respective laws and regulations of the Parties. Information that is not appropriate for public dissemination shall be identified by the relevant Party and is only to be shared according to the procedures and policies of the Parties as permitted by their respective laws. Neither Party shall disclose such information without the consent of the owner of that information.

Article 6.13 Dispute Settlement

1. Matters arising under this Chapter that cannot be settled through consultations under Article 6.10 of this Chapter may be forwarded by either Party for consideration by the CEP Joint Commission.

2. Without prejudice to the rights of the Parties under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, Chapter 17 on Dispute Settlement shall not apply to the provisions of this Chapter.

INTELLECTUAL PROPERTY RIGHTS

Article 12.1 Definitions

For the purposes of this Chapter, "intellectual property rights" refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Article 12.2 Observance of International Obligations

The Parties shall fully respect the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and any other multilateral agreement relating to intellectual property to which both are party.

Article 12.3 Intellectual Property Principles

1. The Parties recognise the importance of intellectual property rights in promoting economic and social development, particularly in the new digital economy; technological innovation; and trade.

2. The Parties are committed to the maintenance of intellectual property rights regimes that promote innovation through protecting the rights of intellectual property right holders and the legitimate interests of the community in accordance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Article 12.4 Cooperation on Enforcement

The Parties shall cooperate and collaborate with a view to ensuring effective protection of intellectual property rights and the prevention of trade in goods and services infringing intellectual property rights, subject to their respective laws, rules, regulations and government policies. Such cooperation may include:

(a) the notification of contact points for the enforcement of intellectual property rights;

(b) the exchange, between relevant agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;

(c) policy dialogue on matters relating to the enforcement of intellectual property rights, including such dialogue in multilateral and regional fora; and

(d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually determined between the Parties.

Article 12.5 Other Cooperation

1. Recognising that intellectual property rights can facilitate international trade through the dissemination of ideas, technology and creative works, the Parties, through their respective agencies responsible for intellectual property, shall:

(a) exchange information relating to developments in intellectual property policy;

(b) encourage and facilitate the development of contacts and cooperation between their respective agencies, educational institutions, organisations and other entities concerning the protection of intellectual property rights with a view to improving and strengthening intellectual property administrative systems in areas such as patents and trade marks;

(c) facilitate the sharing of information and cooperate on appropriate initiatives to promote awareness of intellectual property rights and systems; and

(d) cooperate to enhance understanding in new areas of intellectual property such as traditional knowledge, genetic resources, and folklore,[1] recognising that each Party may wish, consistent with its obligations under the WTO Agreement, to establish appropriate measures to protect traditional knowledge, genetic resources and folklore.

[MARKET ACCESS OF TRADE IN GOODS

Agriculture Market Access

Article 2.1 Scope and Coverage

Except as otherwise provided, this chapter applies to trade in all goods of a party

Article 2.2 National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994. To this end, the provisions of Article III of GATT 1994 and its interpretative notes are incorporated into and shall form part of this Agreement, mutatis mutandis.

Article 2.3 Elimination of Customs Duties

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territory of the Parties.

2. A Party shall not increase an existing customs duty or introduce a new customs duty on imports of an originating good.

3. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its Tariff Schedule at Annex 1. The base rate and the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule. Reductions shall occur upon entry into force of the Agreement and thereafter on 1 January of each year, as provided for in each Party's Schedule.

[1] As referred to in the World Intellectual Property Organisation Inter-Governmental Committee on Traditional Knowledge, Genetic Resources and Folklore.

4. Each Party may adopt or maintain measures necessary to administer a tariff quota set out in its Tariff Schedule, including allocating access to that quota opportunity. Such measures shall be transparent and predictable and shall not have trade restrictive effects on imports additional to those caused by the imposition of the tariff quota.

5. On the written request of the other Party, a Party applying or intending to apply measures pursuant to Paragraph 4 shall consult to consider a review of the administration of those measures.

Article 2.4 Accelerated Tariff Elimination

1. Each Party is prepared to eliminate its customs duties more rapidly than provided for in Article 2.3 or otherwise to improve the conditions of access of originating goods taking into account its general economic situation and the economic situation of the sector concerned.

2. On the request of a Party, the Parties shall promptly enter into consultations to accelerate the elimination of customs duties on originating goods as set out in its Tariff Schedule in Annex 1.

3. An Agreement by the Parties to accelerate the elimination of customs duties on originating goods shall enter into force after the Parties have exchanged written notification advising that they have completed the necessary internal legal procedures and on such date or dates as may be agreed between them.

4. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Tariff Schedule. A Party considering doing so shall inform the other Party as early as practicable before the new rate of customs duties takes effect.

Article 2.5 Administrative Fees and Formalities

Each Party shall ensure, in accordance with Article VIII.1 of GATT 1994, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III.2 of GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.

Article 2.6 Agricultural Export Subsidies

1. For the purposes of this Article, agricultural goods means those products listed in Annex 1 of the WTO Agreement on Agriculture [external link].

2. The Parties share the objective of the multilateral elimination of all forms of export subsidies for agricultural goods and shall work towards an agreement in the WTO to eliminate those subsidies and prevent the introduction in any form of any new export subsidies for agricultural goods.

3. Recognising the trade-distorting nature of export subsidies and consistent with their rights and obligations under the WTO Agreement on Agriculture, neither Party shall introduce or maintain any form of export subsidy on any agricultural good destined for the territory of the other Party.

4. If a Party believes that a policy or measure implemented by the other Party has the effect of providing an export subsidy on any agricultural good exported to that Party, it may request consultations with the aim of preventing such subsidisation occurring on trade between the Parties.

Article 2.7 Non-Tariff Measures

1. A Party shall not adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.
2. Each Party shall ensure the transparency of its non-tariff measures permitted in Paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

MARKET ACCESS FOR TRADE IN SERVICES

Financial Services

Article 9.1 Objectives

The objectives of this Chapter are to:

(a) encourage and promote the open flow of investment between the Parties;

(b) ensure transparent rules conducive to increased investment flows between the Parties;

(c) accord protection and security to investments of the other Party within each Party's territory; and

(d) enhance cooperation in investment between the Parties in order to improve the efficiency, competitiveness and diversity of investment.

Article 9.2 Definitions

For the purposes of this Chapter:

(a) "investment" means every kind of asset, owned or controlled, directly or indirectly, by an investor, including but not limited to the following:

- (i) movable and immovable property and other property rights such as mortgages, liens or pledges;
- (ii) shares, stocks, bonds and debentures or any other form of participation in a juridical person including government issued bonds;
- (iii) a claim to money or a claim to performance having economic value;
- (iv) intellectual property rights, including rights with respect to copyright, patents, trade marks, trade names, industrial designs, trade secrets; know-how; and goodwill;
- (v) business concessions and any other rights required to conduct economic activity and having economic value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources; and
- (vi) returns that are invested.

For the purposes of this Chapter, any alteration to the form in which assets are invested or reinvested shall not affect their character as investments, provided that such altered investment is approved by the relevant Party if so required by its laws, regulations or policies;

(b) ”covered investment” means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter and which has been admitted by the latter Party in accordance with its laws, regulations and policies;

(c) “direct investment” means a direct investment as defined by the International Monetary Fund under its Balance of Payments Manual, fifth edition (BPM5), as amended;

(d) “investor of a Party” means;

- (i) a juridical person of a Party;
- (ii) a natural person who is a national or a citizen or permanent resident of a Party;

that has made, is in the process of making or is seeking to make an investment in the territory of the other Party.

Notwithstanding Sub-paragraph (d)(ii), for the purposes of Article 9.5 of this Chapter “investor of a Party” means a natural person who is a national or a citizen of a Party that has made, is in the process of making or is seeking to make an investment in the territory of the other Party;

(e) “juridical person” means any legal entity duly incorporated, constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or otherwise, including any corporation, company, association, trust, partnership, joint venture or sole proprietorship;

(f) “freely useable currency” means a freely useable currency as determined by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund and amendments thereafter, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;

(g) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

In fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

(h) “permanent resident” means a natural person whose residence in a Party is not limited as to time under its law;

(i) “return” means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income.

Article 9.3 Scope of Application

1. This Chapter applies to measures adopted or maintained by a Party relating to direct investments of investors of the other Party and investors of the other Party, and to the promotion and protection of such investments and investors. Subject to Article 9.5 of this Chapter, such measures shall not include measures by that Party affecting trade in services.

2. This Chapter shall not apply to disputes arising before entry into force of this Agreement.

3. This Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments.

4. This Chapter shall not apply to laws, regulations or policies governing the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.

5. This Chapter shall not prevent an investor of one Party taking advantage of the provisions of any law, regulation or policy of the other Party which are more favourable than the provisions of this Chapter.

6. The application of this Chapter shall be subject to the provisions of Chapters 14, 15 and 18.

Article 9.4 Areas of Cooperation

1. The Parties shall strengthen and develop cooperation efforts in investment including through:

- (a) research and development;
- (b) networking through information technology;
- (c) human resource development;
- (d) information exchange; and
- (e) capacity building, including for small and medium enterprises.

2. The Parties shall foster the development of cooperation in key industries, including in biotechnology, software, electronic manufacturing and agro-processing.

Article 9.5 Scheduling of Commitments

1. Each Party shall set out in a schedule the specific commitments in non-service sectors it undertakes under this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate, the time frame for implementation of such commitments; and

- (e) the date of entry into force of such commitments.

2. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

Article 9.6 National Treatment in respect of the Establishment and Acquisition of Investments

In the sectors inscribed in Annex 4, and/or subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party, in relation to the establishment and acquisition of investments in its territory, treatment that is no less favourable than that which it accords in like circumstances to its own investors with respect to their investments.

Article 9.7 National Treatment in respect of Covered Investments and Investors

1. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments, unless otherwise specified in Annex 4.

2. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the management, conduct, operation, and sale or other disposition of investments, unless otherwise specified in Annex 4.

Article 9.8 Most Favoured Nation Treatment with respect to the Promotion and Protection of Investments

1. For the purposes of the promotion and protection of investments, with the exception of Article 9.16, each Party shall accord to:

- (a) investors of the other Party, treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party; and
- (b) all covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party.

2. Each Party shall accord to investors and investments of investors of the other Party treatment no less favourable than it accords, in like circumstances, to investors and investments of investors of any non-Party, with respect to measures for the promotion and protection of investments adopted or maintained by a Party relating to the requirements (if any) that need to be satisfied for investors and investments to receive the benefits of an agreement relating to investments.

Article 9.9 Denial of Benefits

1. Subject to Paragraph 2 of this Article, a Party may, under its applicable laws and/or regulations, deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such Party and to investments of such an investor where the Party establishes that the juridical person is owned or controlled by persons of a non-Party.

2. For the purposes of promotion and protection of investment and subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such Party and to

investments of such an investor where the Party establishes that the juridical person is owned or controlled by persons of a non-Party and has no substantive business operations in the territory of the other Party.

Article 9.10 Promotion and Protection of Investments

1. Each Party shall accord appropriate protection to:

- (a) covered investments which, if so required, have been specifically approved in writing by the competent authorities concerned of the other Party as being entitled to the benefits of an agreement relating to investments; and
- (b) investors of the other Party, but only in respect of such investors' management, conduct, operation and sale or other disposition of the covered investment related to Sub-paragraph (a).

2. This Article shall not apply to a natural person who is a permanent resident but not a national of a Party where the investment provisions of an agreement between the other Party and the country of which the person is a national have already been invoked in respect of the same matter.

3. A juridical person of a Party shall not be treated as an investor of the other Party, but any investments in that juridical person by investors of that other Party shall be protected by this Article.

Article 9.11 Expropriation

1. Neither Party shall nationalise, expropriate or subject to measures equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the covered investments of investors of the other Party unless the following conditions are complied with:

- (a) the expropriation is for a public purpose related to the internal needs of that Party;
- (b) the expropriation is under due process of law;
- (c) the expropriation is non-discriminatory; and
- (d) the expropriation is accompanied by the payment of prompt, adequate and effective compensation.

2. The compensation referred to in Sub-paragraph 1(d) of this Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation becomes public knowledge. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account, where appropriate, the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.

3. The compensation shall be paid without undue delay, shall include interest at a commercially reasonable rate and be freely transferable between the territories of the Parties in a freely useable currency.

Article 9.12 Compensation for Losses

When a Party adopts any measures relating to losses in respect of covered investments in its territory by persons of any other country owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar events, the treatment accorded to investors of the other Party as regards restitution, indemnification, compensation or other settlement shall be no less favourable than that which the first Party accords to persons of any non-Party.

Article 9.13 Payments and Transfers

1. Subject to Article 15.5, each Party shall, on a non-discriminatory basis, permit all funds of that investor related to an investment in its territory to be transferred freely and without undue delay in a freely useable currency into and out of its territory.[2] Such funds include the following:

- (a) the initial capital plus any additional capital used to maintain or expand the investment;
- (b) returns;
- (c) proceeds from the sale or partial sale or liquidation of the investment;
- (d) repayments of a claim to money;
- (e) payment for the losses referred to in Article 9.12; and
- (f) earnings and other remuneration of personnel engaged from abroad in connection with that investment.

2. Unless otherwise agreed by the investor and the Party concerned, transfers shall be made at the market exchange rate prevailing on the date of transfer.

3. Notwithstanding Paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and in good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) ensuring the satisfaction of judgments, orders or awards in adjudicatory proceedings; or
- (c) criminal matters including but not limited to money laundering, and the recovery of proceeds from crime.

Article 9.14 Subrogation

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance against non-commercial risks or other form of indemnity it has granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

[2] This includes funds of an investor of the other Party that are to be used to establish or acquire an investment in the territory of a Party where such a transfer would be required so as not to nullify or impair a commitment of a Party covered by this Chapter.

2. Where a Party or an agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency of the Party making the payment, pursue those rights and claims against the other Party.

Article 9.15 Access to Competent Judicial or Administrative Bodies

Each Party shall within its territory accord to investors of the other Party treatment no less favorable than the treatment, which it accords in like circumstances, to its own investors with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.

Article 9.16 Settlement of Disputes between a Party and an Investor of the other Party

1. In case of a dispute with respect to a covered investment between a Party and an investor of the other Party, consultations shall take place between the parties concerned with a view to solving the case amicably.

2. If these consultations do not result in a solution within three months from the date of request for settlement, the parties concerned may agree to submit the dispute, for settlement to:

- (a) the competent courts of the Party in the territory of which the investment has been made; or
- (b) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), provided that the other Party does not withhold its consent; or
- (c) the International Centre for Settlement of Investment Disputes in case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on March 18, 1965, provided that the other Party does not withhold its consent.

3. Once an action referred to in Paragraph 2 of this Article has been taken, neither Party shall pursue the dispute through diplomatic channels unless:

- (a) the relevant dispute settlement body has decided that it has no jurisdiction in relation to the dispute in question; or
- (b) the other Party has failed to abide by or comply with any judgment, award, order or other determination made by the relevant dispute settlement body.

4. In any proceeding involving a dispute relating to a covered investment, a Party shall not assert, at any stage of proceedings referred to in Sub-paragraph 2 (b) or (c), that the investor concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

5. An arbitral tribunal established under this Article shall reach its decision on the basis of national laws and regulations of the Party which is a party to the dispute, the provisions of the present Agreement, as well as applicable rules of international law.

6. All arbitral awards shall be final and binding on the parties to the dispute and shall be enforced in accordance with the laws of the Party to the dispute.

7. All sums received or payable as a result of a settlement shall be freely transferable in a freely usable currency.

8. This Article shall not be construed to allow an investor of a Party to pursue a claim against the other Party in relation to any decision that any foreign investment authority of that Party makes in relation to, or conditions that any foreign investment authority of that Party may have placed on the establishment, acquisition or expansion of an investment by that investor, or in relation to the enforcement of any such conditions.

Article 9.17 Modification of Commitments

By giving three months' written notification to the other Party, a Party may modify its commitments under Article 9.5. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary adjustment required to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in schedules of specific commitments prior to such negotiations. If agreement is not reached, the matter may be referred to arbitration in accordance with Chapter 17.

Article 9.18 Review of Commitments

If, after this Agreement enters into force, a Party further liberalises any of its measures applying to investors or investments, it shall give due consideration to a request by the other Party for the incorporation in this Agreement of such unilateral liberalisation.

This includes funds of an investor of the other Party that are to be used to establish or acquire an investment in the territory of a Party where such a transfer would be required so as not to nullify or impair a commitment of a Party covered by this Chapter.

TELECOMMUNICATIONS SERVICES

Article 8.1 Liberalisation of Trade in Services

1. The Parties agree to conclude an agreement which liberalises trade in services between the Parties and which is consistent with Articles V.1 and V.3 of GATS.

2. For the purposes of Paragraph 1, the Parties shall enter into negotiations on trade in services within three years from the date of entry into force of this Agreement, with the aim of concluding an agreement to liberalise trade in services between the two Parties as soon as possible.

3. If a Party enters into an agreement on trade in services with a non-Party, it shall give due consideration to a request by the other Party for the incorporation in the agreement referred to in Paragraph 2 of treatment no less favourable than that provided under the agreement with a non-Party.

4. Pending the conclusion of the negotiations specified in Paragraph 2, interim measures in respect of the Movement of Natural Persons, consistent with the provisions of the "Annex on Movement of Natural Persons Supplying Services under the Agreement" of GATS, shall be taken as specified in the exchange of letters on temporary entry.

5. Nothing in this Agreement shall affect the rights and obligations of the Parties in respect of trade in services under GATS.

MARKET ACCESS FOR TRADE IN SERVICES

Express Delivery Services

No provision on EDS

MARKET ACCESS FOR TRADE IN SERVICES

Movement of Labor

Article 8.1 Liberalisation of Trade in Services

4. Pending the conclusion of the negotiations specified in Paragraph 2, interim measures in respect of the Movement of Natural Persons, consistent with the provisions of the “Annex on Movement of Natural Persons Supplying Services under the Agreement” of GATS, shall be taken as specified in the exchange of letters on temporary entry.

TRANPARENCY

CAPITULO XVII Administración del Acuerdo
Artículo 31. Con el fin de lograr la mejor ejecución del presente Acuerdo, los Países Signatarios convienen en constituir una Comisión Administradora, presidida por el Director General de Relaciones Económicas Internacionales del Ministerio de Relaciones Exteriores, en el caso de Chile, y por el Vice Ministro de Turismo, Integración y Negociaciones Comerciales Internacionales del Ministerio de Industria, Turismo, Integración y Negociaciones Comerciales Internacionales, en el caso del Perú, o por las personas que ellos designen en su representación.

Dicha Comisión deberá instalarse dentro de los sesenta (60) días a contar de la entrada en vigor del presente Acuerdo y en su primera Reunión esta blecerá su Reglamento InterN°

Artículo 32. Sin perjuicio de las atribuciones conferidas en el presente Acuerdo y sus Anexos, la Comisión tendrá las siguientes atribuciones:

a. Velar por el cumplimiento de las disposiciones del presente Acuerdo;

b. Proponer modificaciones al presente Acuerdo;

c. Proponer las recomendaciones que estime convenientes, para resolver los conflictos que puedan surgir de la interpretación y aplicación del presente Acuerdo;

d. Reglamentar el procedimiento para la solución de controversias;

e. Revisar el régimen de origen del presente Acuerdo y modificar el mismo, cuando corresponda;

f. Establecer, modificar, suspender o eliminar requisitos específicos de origen;

g. Realizar un seguimiento de las prácticas y políticas de precios públicos en sectores específicos, a efecto de detectar aquellos casos que pudieran ocasionar distorsiones significativas en el comercio bilateral;

h. Efectuar un seguimiento de los mecanismos de fomento a las exportaciones aplicados en los Países Signatarios, con el fin de detectar eventuales distorsiones a la competencia, derivadas de su aplicación y promover la armonizacíón de los mismos, a medida que avance la liberación del comercio recíproco;

i. Elaborar un informe periódico sobre el funcionamiento del presente Acuerdo acompañado de las recomendaciones que estime convenientes para su mejoramiento y su más completo aprovechamiento;

j. Establecer mecanismos e instancias que aseguren una activa participación de los representantes de los sectores empresariales;

k. Revisar modificar y actualizar las Notas Complementarias del presente Acuerdo, en el sentido de contribuir a la Liberalización del Comercio.

l. Las demás que le sean encomendadas por los Países Signatarios.

Artículo 33. El Gobierno del Perú designa al Ministerio de Industria, Turismo, Integración y Negociaciones Comerciales Internacionales, a través del Vice Ministerio de Turismo, Integración y Negociaciones Comerciales Internacionales, como órgano competente nacional del presente Acuerdo, a su vez, el Gobierno de Chile designa en tal calidad al Ministerio de Relaciones Exteriores, a través de la Dirección General de Relaciones Económicas Internacionales. Las funciones de estos órganos nacionales competentes serán establecidos en el Reglamento de la Comisión Administradora.

CUSTOMS PROCEDURES/TRADE FACILITATION

Anexo Nro. 4 - Régimen para la aplicacion de salvaguardias

ARTÍCULO 1. Salvaguardias bilaterales
1. Un País Signatario podrá aplicar medidas de salvaguardia bilateral, si se establece, en virtud de los procedimientos previstos en este Régimen, que como resultado de circunstancias imprevistas y particularmente por efecto de las concesiones arancelarias acordadas, se aumenta la importación a su territorio de un bien originario del otro País Signatario en términos absolutos o en relación a la producción nacional y en condiciones tales que las importaciones de ese bien, constituyan una causa sustancial de daño grave o una amenaza del mismo a una rama de la producción nacional que produzca un bien similar o directamente competidor. El País Signatario hacia cuyo territorio se esté importando el bien podrá, en la medida mínima necesaria para remediar o prevenir el daño:

a. suspender la reducción futura de cualquier tasa arancelaria establecida en el Acuerdo para el bien;
b. reducir parcialmente el margen de preferencia alcanzado por el programa de desgravación;
c. aumentar la tasa arancelaria para el bien, a un nivel que no exceda el menor de:
    i. la tasa arancelaria aplicada a la nación más favorecida en el momento en que se adopte la medida, o
    ii. la tasa arancelaria aplicada a la nación más favorecida el día inmediatamente anterior a la entrada en vigor de este Acuerdo;

2. El procedimiento que pueda dar lugar a la aplicación de una medida de salvaguardia conforme al párrafo 1, se sujetará a las siguiente condiciones:

a. Un País Signatario notificará sin demora y por escrito, al otro País Signatario, el inicio del procedimiento que pudiera tener como consecuencia la aplicación de una medida de salvaguardia contra un bien originario del territorio del otro País Signatario, solicitando a la vez la realización de consultas.
b. Cualquier medida de esta naturaleza se comenzará a aplicar a más tardar dentro de un año contado desde la fecha de inicio del procedimiento.
c. Las medidas de salvaguardia tendrán un plazo de aplicación de hasta dos años, incluyendo el plazo en que hubieran estado vigentes medidas provisionales.
   De persistir las causales que motivaron la medida, las salvaguardias podrán prorrogarse por un año , para lo cual se presentará al otro País Signatario la justificación correspondiente, con treinta días de anticipación.

   Durante todo el período de prórroga la medida será menos restrictiva que la original. Los Países Signatarios, celebrarán consultas, en forma previa a la adopción de la prorroga, para examinar la eficacia de la flexibilización de la medida prorrogada. El País Signatario que aplique la prorroga facilitará pruebas que sustenten que la rama de producción de que se trate está en proceso de reajuste.

d. Un País Signatario que haya aplicado medidas de salvaguardia a un producto originario del otro País Signatario, no podrá aplicarlas nuevamente a la importación de ese producto, a menos que haya transcurrido un plazo de no

aplicación igual al período de vigencia de la medida y el cual, en todo caso, no podrá ser inferior a veinticuatro meses.

e. Al terminar el período de aplicación de la medida, el arancel que se aplicará al producto objeto de la misma, será el que hubiere estado vigente si no se hubiere aplicado la medida, según el Programa de Liberación establecido en el Acuerdo.
f. Las medidas de salvaguardia que se apliquen de conformidad con el presente Anexo no afectarán las operaciones comerciales en curso.

3. La imposición de una medida de salvaguardia no reducirá las importaciones en cuestión por debajo del promedio de las importaciones realizadas en los tres últimos años representativos para los cuales se disponga de estadísticas, a menos que se dé una justificación clara de la necesidad de fijar un nivel diferente para prevenir o reparar el daño grave.

ARTÍCULO 2. Salvaguardias provisionales:
1. En circunstancias críticas, en las que cualquier demora entrañe un perjuicio difícilmente reparable, el País Signatario que aplique una medida de conformidad con el Artículo 1 del presente Anexo, podrá adoptar una medida de salvaguardia provisional en virtud de una determinación preliminar pero objetiva, de la existencia de pruebas claras de que el aumento de las importaciones han causado o amenazan causar un daño grave a una rama de la producción nacional. Inmediatamente después de adoptada la medida de salvaguardia provisional, se procederá a su notificación y justificación, pudiendo el País Signatario afectado solicitar consultas de conformidad a lo dispuesto en el Art. 1.2 (a).

2. La duración de una medida de salvaguardia provisional no excederá 180 días y adoptará alguna de las formas previstas en el Artículo 1.1 del presente Anexo.

3. No se aplicarán medidas de salvaguardia provisionales a productos cuyas importaciones hayan estado sometidas a medidas de esta naturaleza durante los veinticuatro meses inmediatamente anteriores.

4. En caso de productos comprendidos en los Anexos Nro. 1 y 2 en los cronogramas de desgravación a 10, 15 y 18 años, un País Signatario podrá excepcionalmente, aplicar medidas provisionales especiales por un período de 60 días, cuando se produzca una reducción de precios de exportación de tal magnitud en un producto originario del otro País Signatario, que permita demostrar objetivamente dentro de dicho período, una amenaza de daño grave a una rama de la producción nacional productora de un bien similar o directamente competidor del país importador. Para poder continuar con la aplicación de una medida provisional hasta por el plazo total máximo de 180 días, los Países Signatarios deberán acogerse y cumplir con los requisitos establecidos en el presente artículo.

El País Signatario que aplique esta salvaguardia especial, no podrá invocarla nuevamente hasta transcurridos 360 días desde la adopción de la medida original.

5. Si en la investigación posterior se determina que las causales invocadas para la aplicación de la medida, no han causado o amenazado causar un daño grave a una rama de la producción nacional, se reembolsará con prontitud lo percibido por concepto de medidas provisionales o se liberará la garantía afianzada por dicho concepto, según proceda.

6. Durante el período de vigencia de las medidas provisionales se cumplirán las disposiciones pertinentes de los artículos 1, 4, 5, 6, y 7 del presente Anexo.

ARTÍCULO 3. Salvaguardias globales
1. Cada País Signatario conserva sus derechos y obligaciones conforme al Artículo XIX del GATT 1994 y el *Acuerdo sobre Salvaguardias* del Acuerdo OMC.

2. Cualquier excepción en la aplicación de medidas adoptadas en virtud del Artículo XIX del Gatt (1994) y el Acuerdo sobre Salvaguardias de la OMC., que se otorgue por alguno de los Países Signatarios a un tercer país se extenderá, en las circunstancias y condiciones que se otorgó la excepción**,** automáticamente al otro País Signatario en este Acuerdo.

3. Un País Signatario notificará sin demora y por escrito, al otro País Signatario, el inicio de un procedimiento que pudiera tener como consecuencia la aplicación de una medida de salvaguardia global. En este sentido, ninguno de los Países Signatarios podrá aplicar una medida prevista en el párrafo 1 que imponga restricciones a un bien beneficiado por el Acuerdo sin notificación previa, presentada por escrito a la Comisión Administradora.

ARTÍCULO 4. Procedimientos relativos a medidas de salvaguardia
1. Los Países Signatarios no aplicarán, en su comercio recíproco, medidas de salvaguardias del Artículo 1 y 3 en forma simultánea.

2. Los Países Signatarios sólo podrán aplicar medidas de salvaguardia de carácter arancelario en su comercio recíproco.

3. Cada País Signatario establecerá o mantendrá procedimientos equitativos, oportunos, transparentes y eficaces para la aplicación de medidas de salvaguardia, de conformidad con los requisitos señalados en el Articulo 7.

4. Para la adopción de medidas de salvaguardia, cada País Signatario encomendará la determinación de la existencia de daño serio o amenaza del mismo a una autoridad investigadora competente.

ARTÍCULO 5. Solución de controversias en materia de medidas de salvaguardia
Ninguno de los País Signatarios podrá recurrir al Procedimiento de Solución de Controversias del Acuerdo, antes que las salvaguardias efectivamente se hayan aplicado.

ARTÍCULO 6. Definiciones
Para efectos de este Anexo:

amenaza de daño grave significa la clara inminencia de un daño serio la que deberá estar basada en hechos y no simplemente en alegatos, conjeturas o posibilidades remotas;

autoridad investigadora competente significa la "autoridad investigadora competente" de un País Signatario, la que se notificará por ésta a la Comisión Administradora;

bien originario del territorio de un País Signatario significa un bien originario de conformidad con las disposiciones del Anexo Nro. 3

***circunstancias* críticas** significa circunstancias en que un retraso pueda causar daños de difícil reparación, en la rama de la producción nacional;

daño grave significa un deterioro general significativo de una rama de la producción nacional;

incremento absoluto significa un aumento importante de las importaciones por encima de la tendencia durante un período base representativo reciente;

*i**ncremento en relación con la producción nacional***, significa un incremento de la participación de las importaciones preferenciales con respecto a la producción nacional.

rama de la producción nacional significa el conjunto de productores del bien similar o directamente competidor que opera en el territorio de una País Signatario;

ARTÍCULO 7. Administración de los procedimientos relativos a medidas de salvaguardia
Inicio del procedimiento

1. Los procedimientos para la adopción de medidas de salvaguardia podrán iniciarse mediante solicitud de una entidad o entidades que acrediten ser representativas, en términos tales que constituyan una proporción importante de la producción nacional, de la rama de la producción que fabrica un bien similar o directamente competidor del bien importado.

2. Un País Signatario podrá iniciar el procedimiento de oficio solicitando que la autoridad investigadora competente lo lleve a cabo.

Contenido de la solicitud

3. Cuando la investigación se realice a solicitud de una entidad representativa de una rama de la producción nacional, la peticionaria proporcionará en dicha solicitud la siguiente información, en la medida en que tal información sea de carácter público y pueda ser obtenida en fuentes gubernamentales u otras y, en caso de que no esté disponible, proporcionará las mejores estimaciones que pueda realizar sobre dicha información así como las bases que sustentan esas estimaciones:

a. descripción del producto: el nombre y descripción del bien importado en cuestión, la subpartida arancelaria en la cual se clasifica y el trato arancelario vigente, así como el nombre y la descripción del bien nacional similar o directamente competidor;
b. representatividad:
    i. los nombres y domicilios de las entidades que presentan la solicitud, así como la ubicación de los establecimientos en donde se produzca el bien nacional en cuestión,
    ii. el porcentaje en la producción nacional del bien similar o directamente competidor que representan tales entidades y las razones que las llevan a afirmar que son representativas de una industria, y
    iii. los nombres y ubicación de otros establecimientos nacionales en que se produzca el bien similar o directamente competidor;
c. cifras sobre importación: los datos sobre importación correspondientes a no menos de tres y no mas de los cinco años más recientes.
d. cifras sobre producción nacional: los datos sobre la producción nacional total del bien similar o directamente competidor, correspondientes al período indicado en el punto (c) precedente;
e. datos que demuestren el daño: los indicadores cuantitativos y objetivos que denoten la naturaleza y el alcance del daño causado a la industria en cuestión, tales como los que demuestren cambios en los niveles de ventas, precios, producción, productividad, utilización de la capacidad instalada, participación en el mercado, utilidades o pérdidas, y empleo;

f. causa del daño: la enumeración y descripción de las presuntas causas del daño o amenaza del mismo, y un resumen del fundamento para alegar que el incremento de las importaciones de ese bien, en términos ya sea absolutos o relativos a la producción nacional, es la causa del daño serio o amenaza del mismo, apoyado en información pertinente; y
g. criterios para la inclusión: la información cuantitativa y objetiva que indique la participación de las importaciones procedentes del territorio del otro País Signatario, así como las consideraciones del solicitante sobre el grado en que tales importaciones contribuyen de manera importante al daño serio o amenaza del mismo.

Requisito de notificación

4. Al iniciar un procedimiento para la adopción de medidas de salvaguardia, la autoridad investigadora competente publicará la notificación del inicio del mismo en el Diario Oficial de el País Signatario. La notificación contendrá la siguiente información: el nombre del solicitante; la indicación del bien importado sujeto al procedimiento y su subpartida arancelaria; la naturaleza y plazos en que se dictaría la resolución; los plazos para la presentación de informes, declaraciones y demás documentos ante la autoridad investigadora competente; el lugar donde la solicitud y demás documentos presentados durante el procedimiento pueden inspeccionarse; y el nombre, domicilio y número telefónico de la oficina donde se puede obtener más información.

5. Cuando un procedimiento para la adopción de medidas de salvaguardia se inicie por una solicitud presentada por una entidad que alegue ser representativa de una rama de la producción nacional, la autoridad investigadora competente no publicará la notificación requerida en el párrafo 4 sin antes evaluar cuidadosamente si la solicitud cumple con los requisitos previstos en el párrafo 3, inclusive el de representatividad.

Información confidencial

6. Una vez presentadas las solicitudes ,éstas serán de conocimiento público. La autoridad investigadora competente no divulgará en su informe ninguna información que le haya sido proporcionada en carácter confidencial o que se haya comprometido a mantenerla en tal carácter durante el procedimiento.

La autoridad investigadora competente establecerá o mantendrá procedimientos para el manejo de información que le sea suministrada en carácter de confidencial y la que esté protegida como tal por la ley interna, que se suministre durante el procedimiento, y exigirá de las partes interesadas que proporcionen tal información mediante la entrega de resúmenes escritos no confidenciales de la misma.

Los resúmenes no confidenciales deberán permitir una comprensión razonable de la información suministrada con carácter confidencial. Si las partes interesadas, señalan la imposibilidad de resumir esta información, explicarán las razones que lo impiden.

Prueba de daño y relación causal

7. Para llevar a cabo el procedimiento, la autoridad investigadora competente recabará toda la información pertinente para dictar la resolución correspondiente. Valorará los factores relevantes de naturaleza objetiva y cuantificable que afecten la situación de esa rama de la producción nacional, incluidos la tasa y el monto del incremento de las importaciones del bien en cuestión en términos absolutos y relativos, según proceda; la proporción del mercado nacional cubierta por las importaciones; y los cambios en los niveles de ventas, producción, productividad, utilización de la capacidad instalada, utilidades o pérdidas, y empleo. Para dictar su resolución, la autoridad investigadora competente podrá, además, tomar en consideración otros factores económicos como los cambios en precios e inventarios y la capacidad de las empresas dentro de la industria para generar capital.

8. La autoridad investigadora competente no emitirá una resolución afirmativa sobre la existencia de daño a menos que su investigación demuestre, con base en pruebas objetivas, la existencia de una clara relación causal entre el aumento de las importaciones del bien en cuestión y el daño serio o amenaza del mismo. Salvo lo previsto en el artículo 2.4, cuando otros factores, aparte del aumento de las importaciones causen, al mismo tiempo, daño a una rama de la producción nacional, este daño no se atribuirá al referido incremento.

Deliberación e informe
9. De acuerdo a la legislación y prácticas de cada País Signatario, la autoridad investigadora competente, pondrá a disposición de cualquier parte interesada y del público en general un informe que contenga los antecedentes y fundamentos no confidenciales que se tuvieron en consideración para alcanzar los resultados de la investigación y todas las conclusiones razonadas relativas a las cuestiones pertinentes de hecho y de derecho. Asimismo, un resumen de dicho informe, conjuntamente con la Resolución que dispone la aplicación de la medida adoptada, se publicará oportunamente en el Diario Oficial del País Signatorio que aplica la medida.

Anexo Nro. 5 - Medidas sanitarias y fitosanitarias

ARTÍCULO 1. Los Países Signatarios se regirán por lo establecido en el Acuerdo sobre la Aplicación de Medidas Sanitarias y Fitosanitarias de la Organización Mundial del Comercio (MSF/OMC), respecto a la adopción y aplicación de sus medidas sanitarias y fitosanitarias.

Se aplicarán al presente Anexo las definiciones de dicho Acuerdo.

ARTÍCULO 2. Los Países Signatarios utilizarán las normas, directrices y recomendaciones internacionales como base para la adopción o aplicación de sus medidas sanitarias y fitosanitarias.

Los Países Signatarios podrán establecer o mantener medidas sanitarias y fitosanitarias que ofrezcan un nivel de protección más elevado que el que se lograría mediante una medida basada en una norma, directriz o recomendación internacional, siempre que existan fundamentos científicos.

Cada País Signatario aceptará como equivalentes las medidas sanitarias y fitosanitarias del otro País Signatario, aún cuando difieran de las propias, siempre que se demuestre que logran un nivel adecuado de protección.

ARTÍCULO 3. Los Países Signatarios se comprometen a que sus medidas sanitarias y fitosanitarias se basen en una evaluación adecuada a las circunstancias de los riesgos existentes para la vida y la salud de las personas, los animales y vegetales, teniendo en cuenta las directrices que elaboran las organizaciones internacionales competentes.

Al establecer su nivel adecuado de protección, tomarán en cuenta las técnicas de evaluación de riesgo elaboradas por las organizaciones internacionales competentes, así como el objetivo de minimizar los efectos negativos sobre el comercio y evitarán hacer distinciones arbitrarias o injustificables en los niveles que considere adecuados en diferentes situaciones, si tales distinciones tienen por resultado una discriminación o una restricción encubierta al comercio.

ARTÍCULO 4. Con el propósito de evitar que las normas de salud humana y del sector pesquero se constituyan en obstáculos al comercio, los organismos competentes en materia sanitaria de los Países Signatarios, suscribirán

Convenios de Cooperación y Coordinación para facilitar el intercambio de productos sin que presenten un riesgo sanitario para ambos países.

ARTÍCULO 5. Los Países Signatarios establecerán los mecanismos e instrumentos necesarios para lograr transparencia, fluidez y plazos en los procedimientos de otorgamiento de autorizaciones, certificaciones e inscripciones o registros sanitarios.

Los Países Signatarios se comprometen a la expedición de las inscripciones y/o registros sanitarios respectivos u otros trámites concernientes a este ámbito para la comercialización, importación y/o exportación, dentro de los plazos previstos en las respectivas legislaciones y reglamentos de ambos países, de manera de garantizar el acceso y el comercio de los productos afectos a estas regulaciones.

Para efectos de este Artículo se considerará como incumplimiento, sujeto al procedimiento de solución de controversias del Acuerdo, la no observancia del mayor de los plazos establecidos en ambas legislaciones nacionales para cada categoría de productos. Los plazos establecidos por las legislaciones nacionales de los Países Signatarios, figuran en el Apéndice Nro. 1 del presente Anexo.

En el caso de que los plazos actualmente vigentes sean motivo de modificación, estos deberán ser comunicados a través de los organismos nacionales competentes del Acuerdo.

Las Partes Signatarias procuraran no ampliar los plazos indicados salvo por razones científicas o técnicas debidamente justificadas.

Continuación: Anexo Nro. 6

TECHNICAL STANDARDS

CAPITULO X Medidas Sanitarias y Fitosanitarias
Artículo 23. Los Países Signatarios se comprometen a evitar que las normas sanitarias y fitosanitarias se constituyan en obstáculos al comercio. Para tales efectos, se aplicarán las normas establecidas en el Anexo N° 5 del presente Acuerdo y en el Acuerdo de Cooperación y Coordinación en materia de Sanidad Agropecuaria suscrito entre el Servicio Nacional de Sanidad Agraria (SENASA) del Ministerio de Agricultura de la República del Perú y el Servicio Agrícola y Ganadero (SAG) del Ministerio de Agricultura de la República de Chile, el cual es parte integrante del presente Acuerdo y figura en el Anexo N° 6.

CAPITULO XI

Medidas relativas a la Normalización y Metrología
Artículo 24. Los Países Signatarios se comprometen a la eliminación de los obstáculos técnicos innecesarios al comercio, que pudieran derivarse de la aplicación de medidas relativas a la normalización y metrología. Para tales efectos, se establece el Régimen que figura en el Anexo N° 7 del presente Acuerdo.

ANEXO NRO. 7 - MEDIDAS RELATIVAS A LA NORMALIZACION Y METROLOGIA

ARTÍCULO 1. Este Anexo es de aplicación a las medidas relativas a la normalización y metrología de los Países Signatarios, tanto de nivel nacional como local, que puedan afectar directa o indirectamente, el comercio entre los mismos.

Las disposiciones de este Anexo no son aplicables a las medidas sanitarias y fitosanitarias, las que se regirán por los Anexos 5 y 6 del presente Acuerdo.

Este Anexo no se aplicará a las especificaciones de compras establecidas por las instituciones gubernamentales.

ARTÍCULO 2. Los Países Signatarios utilizarán como base para la elaboración, adopción y aplicación de sus medidas relativas a normalización y metrología, las directrices y recomendaciones internacionales en los términos establecidos en el Acuerdo OTC/OMC, y además de lo dispuesto en el, los Países Signatarios aplicarán las disposiciones establecidas en este Anexo.

ARTÍCULO 3. Los Países Signatarios se asegurarán que no se elaboren, adopten o apliquen medidas relativas a la normalización y metrología que tengan por objeto o efecto crear obstáculos innecesarios al comercio entre los mismos.

Cada País Signatario adoptará las medidas necesarias para garantizar el cumplimiento de las disposiciones de este Anexo, tanto a nivel nacional como local, así como las medidas que estén a su alcance respecto de los organismos no gubernamentales de normalización debidamente reconocidos en su territorio.

ARTÍCULO 4. Los reglamentos técnicos no restringirán el comercio más de lo necesario para alcanzar un objetivo legítimo, teniendo en cuenta los riesgos que se crearían no alcanzarlos. Tales objetivos legítimos son entre otros: los imperativos de la seguridad nacional, la prevención de prácticas que puedan inducir a error; la protección de la salud o seguridad humana, de la vida o la salud animal o vegetal, o del medio ambiente. Al evaluar esos riesgos, los elementos pertinentes a tomar en consideración son, entre otros: la información disponible científica y técnica, la tecnología de elaboración conexa o los usos finales a que se destinen los productos.

Con relación a los reglamentos técnicos, cada País Signatario otorgará a los bienes del otro País Signatario, trato nacional y un trato no menos favorable que el otorgado a productos similares originarios de cualquier otro país.

Los reglamentos técnicos adoptados no se mantendrán si las circunstancias que dieron lugar a su adopción ya no existen, o si los objetivos determinados pueden atenderse de manera menos restrictiva.

ARTÍCULO 5. En los casos en que no exista una norma internacional pertinente o en que el contenido técnico de un reglamento técnico en proyecto no este en conformidad con el contenido técnico de las normas internacionales pertinentes, y siempre que dicho reglamento técnico pueda tener un efecto en el comercio de los Países Signatarios, cada País Signatario notificará por escrito al otro País Signatario la medida propuesta, por lo menos con 30 días de anticipación a la adopción o modificación de la medida, que no tengan carácter de ley, de modo que permita a los interesados durante este período presentar y formular observaciones y consultas, a fin de que la parte notificante pueda absolverlos y tomarlos en cuenta.

El presente Artículo no se aplicará cuando se presenten circunstancias urgentes, según lo establecido en el Artículo 2.10 del Acuerdo OTC/OMC.

Cuando el País Signatario notificado considere que subsisten razones para calificar que la medida adoptada constituye un obstáculo técnico al comercio podrá, contando con los antecedentes y agotada los coordinaciones entre las autoridades competentes, elevar el caso a la instancia pertinente a fin de que sea tratado de acuerdo a lo establecido en el Anexo sobre Solución de Controversias.

ARTÍCULO 6. Los Países Signatarios trabajarán para hacer compatible, en el mayor grado posible sus respectivas medidas de normalización y metrología, sin reducir el nivel de seguridad o protección de la vida o la salud humana, animal o vegetal, del medio ambiente o de los consumidores, sin perjuicio de los derechos que confiera este Anexo a cualquiera de los Países Signatarios y tomando en cuenta las actividades internacionales de normalización y metrología, con el fin de facilitar el comercio entre los Países Signatarios.

Siempre y cuando se cuente con la seguridad de que los reglamentos técnicos cumplen adecuadamente los objetivos legítimos, cada País Signatario aceptará como equivalentes los reglamentos técnicos del otro País Signatario, aún cuando difieran de los suyos propios. Para llegar a un entendimiento mutuamente satisfactorio en este sentido, los Países Signatarios podrán realizar consultas previas.

ARTÍCULO 7. Reconociendo la existencia de diferencias en los procedimientos de acreditación en sus respectivos territorios, los Países Signatarios los harán compatibles en el mayor grado posible, de acuerdo con las normas internacionales en esta materia y con lo establecido en este Anexo.

Cada País Signatario se asegurará de que los procedimientos de acreditación que se elaboren, adopten o apliquen, no discriminen a las entidades de evaluación de la conformidad del otro País Signatario, ni tengan por objeto o efecto crear obstáculos innecesarios en el comercio, de conformidad con lo establecido en el Articulo 5.2 del Acuerdo sobre Obstáculos Técnicos al Comercio de la OMC.

En estos términos las entidades de evaluación de la conformidad de un País Signatario podrá, sin que sea necesaria la existencia de un Acuerdo de Reconocimiento Mutuo previo, postular a la acreditación en el territorio del otro País Signatario, sometiéndose para tal efecto a las reglas que rigen dicho procedimiento.

Con el fin de avanzar en la facilitación del comercio, un País Signatario, considerará favorablemente a solicitud del otro País Signatario, entablar negociaciones encaminadas a la conclusión de Acuerdos de Reconocimiento Mutuo de los resultados de sus respectivos procedimientos de evaluación de la conformidad.

ARTÍCULO 8. Cada País Signatario aplicará las disposiciones pertinentes del segundo párrafo del Artículo precedente a sus procedimientos de aprobación, con las modificaciones que se requieran.

ARTÍCULO 9. Los Países Signatarios se comprometen a adoptar, a los fines del comercio, el Sistema Internacional de Unidades.

ARTÍCULO 10. Cada País Signatario se asegurará de que haya al menos un Centro de Información en su territorio capaz de responder a todas las preguntas y solicitudes razonables del otro País Signatario y de las personas interesadas, así como de proporcionar la documentación pertinente en relación con todo lo referente a este Anexo.

ARTÍCULO 11. Los Países Signatarios establecen un Grupo de Trabajo de Medidas Relativas a la Normalización y Metrología integrado por representantes designados por cada uno de ellos.

Dicho grupo de trabajo se encargará, entre otras materias, de realizar el seguimiento y cumplimiento de los compromisos en materia de medidas relativas a la normalización y metrología que se acuerden en el presente Acuerdo de Complementación Económica. Del mismo modo se realizarán acciones con el propósito de desarrollar y fortalecer los sistemas de normalización, reglamentación técnica, evaluación de la conformidad y la metrología de ambos Países Signatarios, así como facilitar el proceso de acuerdos de reconocimiento mutuo.

Para efectos de lo establecido en este Anexo, en el término de 30 días posteriores a la entrada en vigencia del presente Acuerdo de Complementación Económica, los Países Signatarios se notificarán mutuamente las autoridades competentes designadas como representantes ante el Grupo de Trabajo de Medidas Relativas a la Normalización y Metrología.

ARTÍCULO 12. A petición de un País Signatario, el otro País Signatario, podrá proporcionarle información y asistencia técnica en términos y condiciones mutuamente acordados, para fortalecer las medidas relativas a la normalización y metrología de ese País Signatario, así como sus actividades, procesos y sistemas sobre la materia. Asimismo podrá proporcionar a ese País Signatario información sobre sus programas de cooperación técnica vinculados con las medidas relativas a la normalización y metrología sobre áreas de interés particular.

Cada uno de los Países Signatarios fomentará que los organismos de normalización en su territorio cooperen con los del otro País Signatario en su territorio, según proceda, en actividades de medidas relativas a la normalización y metrología; por ejemplo, por medio de membresías en organismos internacionales de normalización.

ARTÍCULO 13. Definiciones.

Para efectos de este Anexo, se aplicarán los términos contenidos en el Anexo 1 del Acuerdo de Obstáculos Técnicos al Comercio de la OMC, además de los siguientes:

Medidas relativas a la Normalización : Una norma, un reglamento técnico o un procedimiento de evaluación de la conformidad.

Norma Internacional : Norma adoptada por un organismo internacional de normalización, y puesta a disposición del publico.

Organismos Internacionales de Normalización: Organismos de Normalización abiertos a la participación de los organismos pertinentes de al menos todos los Miembros del Acuerdo sobre Obstáculos Técnicos al Comercio de la OMC, incluidos la Organización Internacional de Normalización (ISO), La Comisión Electrotécnica Internacional (IEC), La Comisión del Codex Alimentarius, La Unión Internacional de Telecomunicaciones (ITU), la Organización Internacional de Metrología Legal (OIML), o cualquier otro organismo que los Países Signatarios designen.

Procedimientos de Aprobación : El registro o cualquier otro procedimiento administrativo obligatorio para el otorgamiento de un permiso con el fin de que un producto sea producido, comercializado o autorizado para fines definidos o conforme a condiciones establecidas.

Hacer compatible: Llevar hacia un mismo nivel las medidas relativas a la normalización y metrología diferentes, pero con mismo alcance, aprobadas por distintos organismos de normalización y metrología, de manera que

sean equivalentes o tengan el efecto de permitir que los productos se utilicen indistintamente o para el mismo propósito, a efectos de permitir la comercialización de los productos entre los Países Signatarios.

MARKET ACCESS OF TRADE IN GOODS
AGRICULTURE MARKET ACCESS

CAPITULO II

Programa de Liberación
Artículo 2. Ningún País Signatario mantendrá o aplicará nuevas restricciones no arancelarias a la importación o a la exportación de productos de su territorio al del otro País Signatario, ya sea mediante contingentes, licencias o por medio de otras medidas, sin perjuicio de lo previsto en el Artículo 50 del Tratado de Montevideo y en los Artículos XX y XXI del Acuerdo del GATT 1994.

Artículo 3. Para los efectos del presente Acuerdo se entenderá por "restricciones" toda medida de carácter administrativo, financiero, cambiario o de cualquier naturaleza, mediante la cual uno de los Países Signatarios impida o dificulte, por decisión unilateral, sus importaciones.

Artículo 4. Los Países Signatarios convienen en liberar de gravámenes su comercio recíproco según el siguiente programa de desgravación arancelaria:

a) Una desgravación total de gravámenes a la importación para el comercio recíproco a partir del 1 de julio de 1998, a los productos que en nomenclatura NALADISA, figuran con D-0, en el Anexo N^{o} 1 del presente Acuerdo.

b) Los productos en la nomenclatura NALADISA incluidos en el Anexo N^{o} 1 del presente Acuerdo identificados con D-5, estarán sujetos al siguiente cronograma de desgravación:

Desgravación en 5 años

CRONOGRAMA CHILE:
Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%
Del 1 julio 1998 al 30 junio 1999	0%	11.0%
Del 1 julio 1999 al 30 junio 2000	20%	8.8%
Del 1 julio 2000 al 30 junio 2001	40%	6.6%
Del 1 julio 2001 al 30 junio 2002	60%	4.4%
Del 1 julio 2002 al 30 junio 2003	80%	2.2%

A partir del 1 julio 2003	100%	0.0%

	Margen de preferencia referencial	Arancel residual ad-valorem			
		12%	12%+5%		20%+5%
Del 1 julio 1998 al 30 junio 1999	0%	12%	17.0%	20%	25%
Del 1 julio 1999 al 30 junio 2000	20%	9.6%	13.6%	16%	20%
Del 1 julio 2000 al 30 junio 2001	40%	7.2%	10.2%	12%	15%
Del 1 julio 2001 al 30 junio 2002	60%	4.8%	6.8%	8%	10%
Del 1 julio 2002 al 30 junio 2003	80%	2.4%	3.4%	4%	5%
A partir del 1 julio 2003	100%	0.0%	0%	0%	0%

c) Los productos en nomenclatura NALADISA del Anexo N^{o} 1 del presente acuerdo, identificados con D-10, estarán sujetos al siguiente cronograma de desgravación:

Desgravación en 10 años

CRONOGRAMA CHILE:

Período de desgravación para productos cuyo grava men vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%
Del 1 julio 1998 al 30 junio 2002	0%	11.0%
Del 1 julio 2002 al 30 junio 2003	14%	9.5%

Del 1 julio 2003 al 30 junio 2004	29%	7.8%
Del 1 julio 2004 al 30 junio 2005	43%	6.3%
Del 1 julio 2005 al 30 junio 2006	57%	4.7%
Del 1 julio 2006 al 30 junio 2007	71%	3.2%
Del 1 julio 2007 al 30 junio 2008	86%	1.5%
A partir del 1 julio 2008	100%	0.0%

CRONOGRAMA PERU:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferenciareferencial	Arancel residual ad-valorem			
		12%	12%+5%	20%	20%+5%
Del 1 julio 1998 al 30 junio 2002	0%	12.0%	17.0%	20.0%	25%
Del 1 julio 2002 al 30 junio 2003	14%	10.3%	14.6%	17.2%	21.5%
Del 1 julio 2003 al 30 junio 2004	29%	8.5%	12.1%	14.2%	17.8%
Del 1 julio 2004 al 30 junio 2005	43%	6.8%	9.7%	11.4%	14.3%
Del 1 julio 2005 al 30 junio 2006	57%	5.2%	7.3%	8.6%	10.8%
Del 1 julio 2006 al 30 junio 2007	71%	3.5%	4.9%	5.8%	7.3%
Del 1 julio 2007 al 30 junio 2008	86%	1.7%	2.4%	2.8%	3.5%
A partir del 1 julio 2008	100%	0.0%	0.0%	0%	0%

d) Los productos en nomenclatura NALADISA, incluidos en el Anexo N^{o} 1 del presente Acuerdo, identificados con D-15, estarán sujetos al siguiente cronograma de desgravación:

Desgravación en 15 años

CRONOGRAMA PARA AMBOS PAISES

e) Los productos en nomenclatura NALADISA, incluidos en el Anexo N^{o} 1 del presente Acuerdo, identificados con D-18, estarán sujetos al siguiente cronograma de desgravación:

Desgravación en 18 años

CRONOGRAMA PARA AMBOS PAISES

	Margen de Preferencia
Del 1 julio 1998 al 30 junio 2008	0%
Del 1 julio 2008 al 30 junio 2009	11%
Del 1 julio 2009 al 30 junio 2010	22%
Del 1 julio 2010 al 30 junio 2011	33%
Del 1 julio 2011 al 30 junio 2012	45%
Del 1 julio 2012 al 30 junio 2013	56%
Del 1 julio 2013 al 30 junio 2014	67%
Del 1 julio 2014 al 30 junio 2015	78%
Del 1 julio 2015 al 30 junio 2016	89%
A partir del 1 julio 2016	100%

f) Los productos en nomenclatura NALADISA, incluidos en el Anexo N^{o} 1, del presente Acuerdo, identificados con DT-3A, estarán sujetos al siguiente cronograma de desgravación:

Desgravación a 3 años para el sector textil

CRONOGRAMA CHILE:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%
Del 1 julio 1998 al 30 junio 1999	15%	9.4%
Del 1 julio 1999 al 30 junio 2000	35%	7.2%
Del 1 julio 2000 al 30 junio 2001	60%	4.4%

A partir del 1 julio 2001	100%	0.0%

CRONOGRAMA PERU:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		20%
Del 1 julio 1998 al 30 junio 1999	15%	17%
Del 1 julio 1999 al 30 junio 2000	35%	13%
Del 1 julio 2000 al 30 junio 2001	60%	8%
A partir del 1 julio 2001	100%	0%

g) Los productos en nomenclatura NALADISA, incluidos en el Anexo N^{o} 1, del presente Acuerdo, identificados con DT-3B, estarán sujetos al siguiente cronograma de desgravación:

Desgravación a 3 años para el sector textil

CRONOGRAMA CHILE:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%
Del 1 julio 1998 al 30 junio 1999	10%	9.9%
Del 1 julio 1999 al 30 junio 2000	30%	7.7%
Del 1 julio 2000 al 30 junio 2001	60%	4.4%
A partir del 1 julio 2001	100%	0.0%

CRONOGRAMA PERU:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem	
		12%	20%
Del 1 julio 1998 al 30 junio 1999	10%	10.8%	18%
Del 1 julio 1999 al 30 junio 2000	30%	8.4%	14%
Del 1 julio 2000 al 30 junio 2001	60%	4.8%	8%
A partir del 1 julio 2001	100%	0.0%	0%

h) Los productos en nomenclatura NALADISA, incluidos en el Anexo N^{o} 1 del presente Acuerdo, identificados con DT-5, estarán sujetos al siguiente cronograma de desgravación:

Desgravación a 5 años para el sector textil

CRONOGRAMA CHILE:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%
Del 1 julio 1998 al 30 junio 1999	15%	9.4%
Del 1 julio 1999 al 30 junio 2000	35%	7.2%
Del 1 julio 2000 al 30 junio 2001	55%	5.0%

Del 1 julio 2001 al 30 junio 2002	75%	2.8%
A partir del 1 julio 2002	100%	0.0%

CRONOGRAMA PERU:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem	
		12%	20%
Del 1 julio 1998 al 30 junio 1999	15%	10.2%	17%
Del 1 julio 1999 al 30 junio 2000	35%	7.8%	13%
Del 1 julio 2000 al 30 junio 2001	55%	5.4%	9%
Del 1 julio 2001 al 30 junio 2002	75%	3.0%	5%
A partir del 1 julio 2002	100%	0.0%	0%

i) Los productos en nomenclatura NALADISA incluidos en el Anexo N^{o} 1, del presente Acuerdo, identificados con DT-6, estarán sujetos al siguiente cronograma de desgravación:

Desgravación a 6 años para el sector textil

CRONOGRAMA CHILE:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%

Del 1 julio 1998 al 31 diciembre 1999	10%	9.9%
Del 1 enero 2000 al 31 diciembre 2000	20%	8.8%
Del 1 enero 2001 al 31 diciembre 2001	40%	6.6%
Del 1 enero 2002 al 31 diciembre 2002	60%	4.4%
Del 1 enero 2003 al 31 diciembre 2003	80%	2.2%
A partir del 1 enero 2004	100%	0.0%

CRONOGRAMA PERU:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		20%
Del 1 julio 1998 al 31 diciembre 1999	10%	18%
Del 1 enero 2000 al 31 diciembre 2000	20%	16%
Del 1 enero 2001 al 31 diciembre 2001	40%	12%
Del 1 enero 2002 al 31 diciembre 2002	60%	8%
Del 1 enero 2003 al 31 diciembre 2003	80%	4%
A partir del 1 enero 2004	100%	0%

j) Los productos en nomenclatura NALADISA, incluidos en el Anexo N^{o} 1 del presente Acuerdo, identificado DT-8A, estarán sujetos al siguiente cronograma de desgravación:

Desgravación a 8 años para el sector textil

CRONOGRAMA CHILE:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%
Del 1 julio 1998 al 30 junio 1999	0%	11.0%

Del 1 julio 1999 al 30 junio 2000	0%	11.0%
Del 1 julio 2000 al 30 junio 2001	14%	9.5%
Del 1 julio 2001 al 30 junio 2002	29%	7.8%
Del 1 julio 2002 al 30 junio 2003	43 %	6.3%
Del 1 julio 2003 al 30 junio 2004	57%	4.7%
Del 1 julio 2004 al 30 junio 2005	71%	3.2%
Del 1 julio 2005 al 30 junio 2006	86%	1.5%
A partir del 1 julio 2006	100%	0.0%

CRONOGRAMA PERU:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem	
		12%	20%
Del 1 julio 1998 al 30 junio 1999	0%	12.0%	20.0%
Del 1 julio 1999 al 30 junio 2000	0%	12.0%	20.0%
Del 1 julio 2000 al 30 junio 2001	14%	10.3%	17.2%
Del 1 julio 2001 al 30 junio 2002	29%	8.5%	11.4%
Del 1 julio 2002 al 30 junio 2003	43%	6.8 %	8.6%
Del 1 julio 2003 al 30 junio 2004	57%	5.2%	5.8%
Del 1 julio 2004 al 30 junio 2005	71%	3.5%	2.8%
Del 1 julio 2005 al 30 junio 2006	86%	1.7%	0.0%
A partir del 1 julio 2006	100%	0%	

k) Los productos en nomenclatura NALADISA, incluidos en el Anexo N^{o} 1 del presente Acuerdo, identificados con DT-8B, estarán sujetos al siguiente cronograma de desgravación:

Desgravación a 8 años para el sector textil

CRONOGRAMA CHILE:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		11%
Del 1 julio 1998 al 30 junio 2002	0%	11.0%
Del 1 julio 2002 al 30 junio 2003	20%	8.8%
Del 1 julio 2003 al 30 junio 2004	40%	6.6%
Del 1 julio 2004 al 30 junio 2005	60%	4.4%
Del 1 julio 2005 al 30 junio 2006	80%	2.2 %
A partir del 1 julio 2006	100%	0.0%

CRONOGRAMA PERU:

Período de desgravación para productos cuyo gravamen vigente es de:

	Margen de preferencia referencial	Arancel residual ad-valorem
		20%
Del 1 julio 1998 al 30 junio 2002	0%	20%
Del 1 julio 2002 al 30 junio 2003	20%	16%
Del 1 julio 2003 al 30 junio 2004	40%	12%
Del 1 julio 2004 al 30 junio 2005	60%	8%
Del 1 julio 2005 al 30 junio 2006	80 %	4 %
A partir del 1 julio 2006	100%	0%

l) Los productos en nomenclatura NALADISA, incluidos en el Anexo N° 1 del presente Acuerdo, que tienen además de uno de los códigos antes señalado un asterisco (*), se desgravarán en forma inmediata en favor del Perú, en el caso de Chile la desgravación será la asignada al literal pertinente de este artículo.

m) Los productos contenidos en el Anexo N° 2 del presente Acuerdo, estarán sujetos a las condiciones señaladas en el mismo. En dicho Anexo, en los casos que corresponda, se consignan las preferencias y condiciones establecidas en el Acuerdo de Alcance Parcial N° 28.

Las desgravaciones previstas en el presente Artículo se aplicarán sobre el valor CIF o sobre el valor aduanero, según corresponda, en concordancia con el Acuerdo relativo a la aplicación del Artículo VII del Acuerdo General sobre Aranceles Aduaneros y Comercio de 1994 sobre Valoración Aduanera.

Artículo 5. Si en cualquier momento un País Signatario reduce sus gravámenes arancelarios a terceros países, para uno o varios productos comprendidos en este Acuerdo, procederá a juntar el gravamen aplicable al comercio recíproco de conformidad con las proporcionalidades establecidas (margen de preferencia referencial) en los literales señalados en el artículo anterior, según corresponda.

Artículo 6. Los Países Signatarios intercambiarán, en el momento de la firma del presente Acuerdo los aranceles vigentes y se mantendrán informados, a través de los organismos competentes, sobre las modificaciones subsiguientes.

Artículo 7. Las mercaderías usadas no se beneficiarán del Programa de Liberación establecido en el presente Acuerdo, incluso aquellas que tengan sub-partida específica en la nomenclatura NALADISA.

Artículo 8. Los Paises [sic] Signatarios, en el marco de la Comisión Administradora, podrán acelerar el programa de desgravación arancelaria para aquellos productos o grupos de productos que de común acuerdo convengan.

Artículo 9. Para los efectos de este Acuerdo se entenderá por "gravámenes" los derechos aduaneros y cualesquiera otras cargas de efectos equivalentes, sean de carácter fiscal, monetario, cambiario o de cualquier naturaleza, que incidan sobre las importaciones. No quedan comprendidos en este concepto las tasas y recargos análogos cuando sean equivalentes al costo de los servicios efectivamente prestados.

Artículo 10. Los Países Signatarios no podrán adoptar o mantener gravámenes y cargas de efectos equivalentes distintos de los derechos aduaneros que afecten al comercio bilateral al amparo de presente Acuerdo. No obstante, se podrán mantener los gravámenes y cargas existentes a la fecha de suscripción del Acuerdo y que constan en las Notas Complementarias al presente Acuerdo, pero sin aumentar la incidencia de los mismos. Las mencionadas Notas figuran en el Anexo N° 10.

Los gravámenes y cargas de efectos equivalentes identificados en las citadas Notas Complementarias no estarán sujetos al Programa de Liberación.

Artículo 11. En la utilización del Sistema de Banda de Precios, vigente en Chile, o de Derechos Específicos Variables vigentes en el Perú, relativas a la importación de mercaderías, los Países Signatarios se comprometen en el ámbito de este Acuerdo, a no incluir nuevos productos ni a modificar los mecanismos o aplicarlos de tal forma que signifique un deterioro de las condiciones de acceso a sus respectivos territorios.

El Programa de Liberación del presente Acuerdo no se aplicará sobre los Derechos Específicos derivados de los mecanismos antes señalados.

Los Países Signatarios incorporan en el Anexo N° 9 del presente Acuerdo la Lista de los Productos que actualmente se encuentran incorporados en los sistemas antes citados.

Artículo 12. Sin perjuicio de lo dispuesto en los acuerdos de la OMC, los Países Signatarios no aplicarán al comercio recíproco gravámenes a las exportaciones.

MARKET ACCESS FOR TRADE IN SERVICES
FINANCIAL SERVICES

CAPITULO IX

Inversiones

Artículo 21. Los Países Signatarios propiciarán las inversiones y el establecimiento de empresas, tanto con capital de ambos países como con la participación de terceros.

Artículo 22. Para tal fin los Países Signatarios dentro de sus respectivas legislaciones sobre inversión extranjera, otorgarán tratamiento nacional, a las inversiones del otro País Signatario. Asimismo, estudiarán la posibilidad y conveniencia de la celebración de un Convenio para evitar la Doble Tributación.

MARKET ACCESS FOR TRADE IN SERVICES
TELECOMMUNICATIONS SERVICES

(BLANK)

CAPITULO XIII

Otros Servicios

Artículo 26. Los Países Signatarios adoptarán medidas tendientes a la liberalización del comercio bilateral de servicios. A tal efecto, encomiendan a la Comisión Administradora, que establece el Artículo 31 del presente Acuerdo, que formule las propuestas del caso en un plazo no mayor a un año de la entrada en vigencia del presente Acuerdo, teniendo en cuenta entre otras consideraciones, las negociaciones que se lleven a cabo en la Organización Mundial del Comercio (OMC-GATS) y en los ámbitos regional y hemisféricos sobre estas materias.

MARKET ACCESS FOR TRADE IN SERVICES
MOVEMENT OF LABOR

(BLANK)

TRANSPARENCY

(BLANK)

CUSTOMS PROCEDURES/TRADE FACILITATION

CAPITULO X
COOPERACION ECONOMICA

Artículo 30º.- Ambos Gobiernos promoverán el fortalecimiento de las comunicaciones mutuas en el mayor grado posible, especialmente en lo que se refiere al transporte de mercaderías por vía aérea y marítima, con la finalidad de facilitar el comercio y consolidar el proceso de integración entre las partes.

TECHINCAL STANDARDS

(BLANK)

INTELLECTUAL PROPERTY RIGHTS

(BLANK)

MARKET ACCESS OF TRADE IN GOODS
AGRICULTURE MARKET ACCESS

CAPITULO III
PROGRAMA DE LIBERACION

Artículo 3º El programa de liberación del presente Acuerdo se llevará a cabo a través de los siguientes instrumentos:

1. Operaciones que se efectúen al amparo de preferencias negociadas selectivamente entre los países signatarios, comprendidas en los Anexos I y II; y
2. Operaciones que se efectúen mediante la ejecución de Programas de Intercambio Compensado (PIC).

MARKET ACCESS FOR TRADE IN SERVICES
FINANCIAL SERVICES

CAPITULO XI
CONVERGENCIAS

Artículo 32º.- En ocasión de las sesiones de las Conferencias de Evaluación y Convergencia a que se refiere el artículo 33 del Tratado de Montevideo 1980, los países signatarios examinarán la posibilidad de proceder a la multilateralización progresiva de los tratamientos incluidos en el presente Acuerdo.

MARKET ACCESS FOR TRADE IN SERVICES
TELECOMMUNICATIONS SERVICES

(BLANK)

MARKET ACCESS FOR TRADE IN SERVICES
EXPRESS DELIVERY SERVICES

(BLANK)

MARKET ACCESS FOR TRADE IN SERVICES
MOVEMENT OF LABOR

(BLANK)

NEGOTIATIONS COMPLETED, BUT IMPLEMENTATION PENDING

TEXT OF THE US-PERU FTA CAN BE FOUND AT:

http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/Section_Index.html

TRANSPARENCY

(BLANK)

CUSTOMS PROCEDRES/TRADE FACILITATION

Article 7 Most favoured nation treatment
1. Each Member State shall accord to the other Member State treatment no less favourable than that accorded to any third country in respect of all matters concerning:

(a) customs duties and charges of any kind imposed on, or in connection with, the importation or exportation of any goods, or imposed on the international transfer of payments for imports or exports;

(b) the method of levying such duties and charges;

(c) the rules and formalities connected with the importation or exportation of goods;

(d) all internal taxes or other internal charges of any kind imposed on, or in connection with, imported goods;

(e) internal sale, offering for sale, purchase, distribution or use of imported goods within its territory;

(f) restrictions or prohibitions on the importation or exportation of any goods;

(g) the allocation of foreign exchange; and

(h) the administration of foreign exchange restrictions affecting transactions involving the importation or exportation of any goods.

2. The provision of paragraph 1 of this Article shall not apply to:

(a) advantages accorded by either Member State to adjacent countries to facilitate frontier traffic;

(b) tariff preferences or other advantages granted by either Member State consequent on the membership of that Member State in another free trade area or a customs union, or on an interim agreement leading to the formation of another free trade area or a customs union;

(c) tariff preferences accorded by either Member State to a third country in view of that country's status as a developing country; or

(d) such measures as either Member State may take pursuant to a multilateral international commodity agreement or arrangement.

TECHNICAL STANADARDS

Article 8 Other exceptions
Provided that such measures are not used as a means of arbitrary or unjustifiable discrimination, or as a disguised restriction on trade between the Member States, nothing in this Agreement shall prevent the adoption or enforcement by a Member State of measures:

(a) necessary for the protection of its essential security interests;

(b) necessary to protect public morals;

(c) necessary for the prevention of disorder or crime;

(d) imposed for the protection of its national treasures of artistic, historical, anthropological, palaeontological, archaeological or other cultural or scientific value;

(e) necessary to reserve for approved purposes the use of Royal Arms or national, state, provincial and territorial arms, flags, crests and seals;

(f) necessary to protect human, animal or plant life or health;

(g) necessary to protect its indigenous flora and fauna;

(h) undertaken in pursuance of its rights and obligations under a multilateral international commodity agreement or arrangement;

(i) necessary to prevent or relieve shortages of foodstuffs or other essential goods;

(j) related to the conservation of limited natural resources;

(k) necessary to protect industrial property rights or copyright, or to prevent unfair, deceptive or misleading practices;

(l) necessary to secure compliance with laws relating to customs enforcement, or to tax avoidance or evasion, or to the classification, grading or marketing of goods, or to the operation of recognised commodity marketing boards;

(m) relating to products of prison labour;

(n) relating to trade in gold or silver; or

(o) necessary to safeguard its external financial position and balance of payments.

INTELLECTUAL PROPERTY RIGHTS

(BLANK)

MARKET ACCESS OF TRADE IN GOODS
AGRICULTURE MARKET ACCESS

Article 5 Excepted goods
1. Notwithstanding the provisions of Article 3 of this Agreement:

(a) the goods specified in Schedule A to this Agreement, when imported into Australia from Papua New Guinea, shall be subject to the rate of import duty specified from time to time in the Australian Customs Tariff as being applicable to Papua New Guinea goods;

(b) the goods specified in Schedule B to this Agreement, when imported into Australia from Papua New Guinea, shall be subject to the rate of import duty and to the other regulations, if any, specified in Schedule B as being applicable to those goods;

(c) the goods specified in Schedule C to this Agreement, when imported into Papua New Guinea from Australia, shall be subject to the rate of import duty specified from time to time in the Papua New Guinea Customs Tariff as being applicable to Australian goods; and

(d) the goods specified in Schedule D to this Agreement, when imported into Papua New Guinea from Australia, shall be subject to the rate of import duty and to the other regulations, if any, specified in Schedule D as being applicable to those goods.

2. (a) A Member State shall not increase the rate of import duty on goods specified in Schedules A or C to this Agreement unless:

(i) sixty days have passed since that Member State gave written notice to the other Member State of its intention to make such an increase, and

(ii) if requested in writing it has entered into consultations with the affected State. Such consultations shall begin within thirty days of the receipt of such a request;

(b) A Member State shall not increase the rate of import duty or apply more restrictive regulations of trade to the goods specified in Schedules B or D to this Agreement without the written consent of the relevant authorities of the other Member State. Such consent shall not normally be withheld provided the same notice is given and the same opportunity for consultations provided as is specified in paragraph 2(a) of this Article in relation to Schedules A or C;

(c) The relevant authorities of the Member States may, by mutual consent, vary the requirements for notification and consultation provided for in paragraph 2(a) of this Article.

3. The relevant authorities of Australia may at any time, following written notice to the relevant authorities of Papua New Guinea, remove goods from Schedules A or B to this Agreement or reduce the rates of import duty or make less restrictive the regulations of trade specified as being applicable to goods in those Schedules.

4. The relevant authorities of Papua New Guinea may at any time, following written notice to the relevant authorities of Australia, remove goods from Schedules C or D to this Agreement or reduce the rates of import duty or make less restrictive the regulations of trade specified as being applicable to goods in those Schedules.

Article 3 Free trade

1. A Free Trade Area is hereby established. The Area consists of Papua New Guinea and Australia.

2. Subject to the provisions of this Agreement, trade between the Member States shall be free of duties and other restrictive regulations of commerce.

3. This Article applies only to trade in goods which originate in a Member State.

MARKET ACCESS FOR TRADE IN SERVICES
FINANCIAL SERVICES

(BLANK)

MARKET ACCESS FOR TRADE IN SERVICES
TELECOMMUNICATIONS SERVICES

(BLANK)

MARKET ACCESS FOR TRADE IN SERVICES
EXPRESS DELIVERY SERVICES

(BLANK)

MARKET ACCESS FOR TRADE IN SERVICES
MOVEMENT OF LABOR

(BLANK)

Article 14.1: Definitions
For the purposes of this Chapter:
Administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations and that is relevant to the implementation of this Agreement but does not include:

(a) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good, or service of another Party in a specific case; or
(b) a ruling that adjudicates with respect to a particular act or practice.

Article 14.2: Publication
1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available1n such a manner as to enable interested persons and Parties to become acquainted with them.

2. When possible, each Party shall:
(a) publish in advance any measure referred to in Paragraph 1 that it proposes to adopt; and
(b) provide, where appropriate, interested persons and Parties with a reasonable opportunity to comment on such proposed measures.

Article 14.3: Administrative Proceedings
With a view to administering in a consistent, impartial, and reasonable manner all measures affecting matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 14.2(1) to particular persons, goods, or services of the other Parties in specific cases that:

(a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in question;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 14.4: Review and Appeal
1. Each Party shall, where warranted, establish or maintain judicial, quasi- judicial, or administrative tribunals, or procedures for the purpose of the prompt review and correction of final administrative actions regarding matters covered by this Agreement, other than those taken for prudential reasons. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the Parties to the proceedings are provided with the right to:

[1] Including through the Internet or in print form

(a) a reasonable opportunity to support or defend their respective positions; and
(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 14.5: Contact Points
1. Each Party shall designate a contact point or points to facilitate communications among the Parties on any matter covered by this Agreement.

2. On the request of another Party, the contact points shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

Article 14.6: Notification and Provision of Information
1. Where a Party considers that any proposed or actual measure might materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement, that Party shall notify the interested Party, to the extent possible, of the proposed or actual measure.

2. On request of another Party, a Party shall provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification, request, or information under this Article shall be conveyed to the other Parties through their contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

CHAPTER 15 DISPUTE SETTLEMENT

Article 15.1: Objectives
1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes among the Parties concerning their rights and obligations under this Agreement.

Article 15.2: Scope
1. Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;
(b) wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement; or

(c) wherever a Party considers that an actual or proposed measure of another Party causes nullification or impairment in the sense of Annex 15.A.

2. Subject to Article 15.3, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are parties.

Article 15.3: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another trade agreement to which the disputing Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. The complaining Party shall notify the other Parties in writing of its intention to bring a dispute to a particular forum before doing so. Where a Party wishes to have recourse to a different dispute settlement forum from that notified by another complaining Party, the complaining Parties shall consult with a view to reaching agreement on a single forum in which to settle the dispute.

3. Once a complaining Party has initiated dispute settlement proceedings under Article 15.6, under the WTO Agreement or any other trade agreement to which the disputing Parties are party,2 the forum selected shall be used to the exclusion of the others.

4. Where there is more than one dispute on the same matter arising under this Agreement against a Party, the disputes shall be joined.

Article 15.4: Consultations

1. Any Party may request in writing consultations with any other Party with respect to any actual or proposed measure of that Party that it considers inconsistent with this Agreement or any other matter that it considers might affect the operation of this Agreement, which shall be circulated to all Parties to this Agreement through the Contact Points designated in accordance with Article 14.5 (Contact Points).

2. All such requests for consultations shall set out the reasons for the request, including the identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. The Party to which a request for consultations is made shall reply to the request in writing within 7 days after the date of its receipt. The response to the request for consultations shall be circulated to all Parties.

4. Whenever a Party other than the consulting Parties considers that it has an interest in the consultations, such Party may notify the consulting Parties within 7 days after the notification of the request for consultations, of its desire to be joined in the consultations. The Party complained against shall give positive consideration to any request from a Party to attend consultations requested by any other Party.

5. The Parties shall enter into consultations within a period of no more than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

[2] For the purposes of this Article, dispute settlement proceedings under the WTO Agreement or any other trade agreement are deemed to have been initiated upon a request by a Party for the establishment of a panel or by referral of a matter to an arbitral tribunal.

6. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of any matter through consultations under this Article. To this end, the consulting Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

7. With a view to reaching a mutually satisfactory resolution of the matter, the requesting Party may make representations or proposals to the responding Party, which shall give due consideration to the representations or proposals made to it.

8. In consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 15.5: Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures undertaken voluntarily if the disputing Parties so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular the positions taken by the disputing Parties during these proceedings, shall be confidential and without prejudice to the rights of any Party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any disputing Party. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are concluded without an agreement between the disputing Parties, the complaining Party may request the establishment of an arbitral tribunal under Article 15.6.

4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal convened under Article 15.6.

Article 15.6: Establishment of an Arbitral Tribunal

1. The complaining Party may request, by means of a written notification addressed to the Party complained against, the establishment of an arbitral tribunal if the consulting Parties fail to resolve the matter within:

(a) 45 days after the date of receipt of the request for consultations under Article 15.4;
(b) 30 days after the date of receipt of the request for consultations under Article 15.4 in a matter regarding perishable goods; or
(c) such other period as the consulting Parties agree.

2. Such notification shall also be communicated to all Parties.

3. The request to establish an arbitral tribunal shall identify:

(a) the specific measure at issue;
(b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
(c) the factual basis for the complaint.

4. Unless otherwise agreed by the disputing Parties, the arbitral tribunal shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

5. Notwithstanding Paragraphs 1, 3, and 4, an arbitral tribunal may not be established to review a proposed measure.

Article 15.7: Composition of Arbitral Tribunals
1. The arbitral tribunal shall comprise three members.

2. In the written notification pursuant to Article 15.6, the complaining Party or Parties requesting the establishment of an arbitral tribunal shall designate one member of that arbitral tribunal.

3. Within 15 days of the receipt of the notification referred to in Paragraph 2, the Party to which it was addressed shall designate one member of the arbitral tribunal.

4. The disputing Parties shall designate by common agreement the appointment of the third arbitrator within 15 days of the appointment of the second arbitrator. The member thus appointed shall chair the arbitral tribunal.

5. If all 3 members have not been designated or appointed within 30 days from the date of receipt of the notification referred to in Paragraph 2, at the request of any Party to the dispute the necessary designations shall be made by the Director-General of the WTO within a further 30 days.

6. The Chair of the arbitral tribunal shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed by any of the Parties, nor have dealt with the matter in any capacity.

7. All arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
(c) be independent of, and not be affiliated with or take instructions from, any Party; and
(d) comply with the code of conduct for panelists established under the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement.

8. Individuals may not serve as arbitrators for a dispute in which they have participated pursuant to Article 15.5.

9. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

10. The date of establishment of the arbitral tribunal shall be the date on which the Chair is appointed.

Article 15.8: Functions of Arbitral Tribunals
1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it as it thinks fit.

2. The findings and rulings of the arbitral tribunal shall be binding on the disputing Parties.

3. The arbitral tribunal shall, apart from the matters set out in Article 15.9, regulate its own procedures in relation to the rights of Parties to be heard and its deliberations in consultation with the disputing Parties.

4. An arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

Article 15.9: Rules of Procedure for Arbitral Tribunals
1. Unless the disputing Parties otherwise agree, the arbitral tribunal proceedings shall be conducted in accordance with the Model Rules of Procedure for Arbitral Tribunals set out at Annex 15.B. 2. Unless the disputing Parties otherwise agree within 20 days from the date of delivery of the request for the establishment of the arbitral tribunal, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 15.6 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

3. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

4. At the request of a disputing Party or on its own initiative, the arbitral tribunal may seek scientific information and technical advice from experts as it deems appropriate. Any information so obtained shall be submitted to the disputing Parties and any third Party for comment. 5. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, a disputing Party shall bear the cost of its appointed arbitrator and its own expenses. The cost of the Chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne by the disputing Parties in equal shares.

Article 15.10: Suspension or Termination of Proceedings
1. The disputing Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the disputing Parties agree otherwise.

2. The disputing Parties may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

Article 15.11: Initial Report
1. The reports of the arbitral tribunal shall be drafted without the presence of the Parties and shall be based on the relevant provisions of this Agreement and the submissions and arguments of the Parties.

2. Unless the disputing Parties otherwise agree, the arbitral tribunal shall:

(a) within 90 days after the last arbitrator is selected; or
(b) in cases of urgency including those relating to perishable goods within 60 days after the last arbitrator is selected, present to the disputing Parties an initial report.

3. The initial report shall contain:

(a) findings of fact;
(b) the determination of the arbitral tribunal as to whether a disputing Party has not conformed with its obligations under this Agreement or that a disputing Party's measure is causing nullification or impairment in the sense of Annex 15.A or any other determination requested in the terms of reference; and
(c) the decision of the arbitral tribunal on the dispute.

4. In exceptional cases, if the arbitral tribunal considers it cannot release its initial report within 90 days, or within 60 days in cases of urgency, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days unless the disputing Parties otherwise agree.

5. Arbitrators may furnish separate opinions on matters not unanimously agreed.

6. A disputing Party may submit written comments to the arbitral tribunal on its initial report within 15 days of presentation of the report or within such other period as the disputing Parties may agree.

7. After considering any written comments on the initial report, the arbitral tribunal may reconsider its report and make any further examination it considers appropriate.

Article 15.12: Final Report
1. The arbitral tribunal shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

2. If in its final report the arbitral tribunal determines that a disputing Party has not conformed with its obligations under this Agreement, or that a Party's measure is causing nullification or impairment within the sense of Annex 15.A, the decision, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

3. No arbitral tribunal may, either in its initial report or its final report, disclose which arbitrators are associated with majority or minority opinions.

Article 15.13: Implementation of Final Report
1. The final report of an arbitral tribunal shall be binding on the disputing Parties and shall not be subject to appeal.

2. Unless the disputing Parties decide otherwise, they shall implement the decision contained in the final report of the arbitral tribunal within a reasonable period of time if it is not practicable to comply immediately.

3. If the arbitral tribunal determines that a measure of a Party that is taken by local government is not in conformity with its obligations under this Agreement, the Party shall notify the other Parties of the steps, such as legislative, regulatory or administrative steps, which the Party will take to implement the decision of the arbitral tribunal.

4. The reasonable period of time shall be mutually determined by the disputing Parties, or where the disputing Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral tribunal's report, either Party to the dispute may refer the matter to the arbitral tribunal, which shall determine the reasonable period of time following consultation with the disputing Parties.

Article 15.14: Compliance within Reasonable Period of Time

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the decision of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal.

2. The arbitral tribunal shall provide its report to the disputing Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, if shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the disputing Parties otherwise agree.

Article 15.15: Compensation and Suspension of Benefits

1. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance with the decision of the arbitral tribunal under Article 15.12 within the reasonable period of time established in accordance with Article 15.13, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If the arbitral tribunal decides that a Party's measure is causing nullification or impairment in the sense of Annex 15.A and the nullification or impairment is not addressed within the reasonable period of time established in accordance with Article 15.13, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

3. A complaining Party may suspend the application of benefits of equivalent effect to the responding Party 30 days after the end of the reasonable period of time established in accordance with Article 15.13. Benefits may not be suspended while the complaining Party is pursuing negotiations under Paragraphs 1 or 2.

4. Compensation and the suspension of benefits shall be temporary measures. Neither compensation nor the suspension of benefits is preferred to full implementation of a decision to bring a measure into conformity with this Agreement. Compensation and suspension of benefits shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's decision has done so, or a mutually satisfactory solution is reached.

5. In considering what benefits to suspend pursuant to Paragraph 3:

> (a) the complaining Party should first seek to suspend benefits in the same sector(s) as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with the obligations derived of this Agreement or to have caused nullification or impairment in the sense of Annex 15.A; and
> (b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector(s), it may suspend benefits in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

6. Upon written request of the Party concerned, the original arbitral tribunal shall determine whether the level of benefits suspended by the complaining Party is excessive pursuant to Paragraph 3. If the arbitral tribunal cannot be established with its original arbitrators, the proceeding set out in Article 15.7 shall be applied.

7. The arbitral tribunal shall present its determination within 60 days from the request made pursuant to Paragraph 6, or if an arbitral tribunal cannot be established with its original arbitrators, from the date on which the last arbitrator is selected.

The ruling of the arbitral tribunal shall be final and binding. It shall be delivered to the disputing Parties and be made publicly available.

Article 15.16 : Compliance Review
1. Without prejudice to the procedures in Article 15.15, if the responding Party considers that it has eliminated the non-conformity or the nullification or impairment that the arbitral tribunal found, it may refer the matter to the arbitral tribunal by providing written notice to the other Party. The arbitral tribunal shall issue its report on the matter within 90 days after the responding Party provides notice.

2. If the arbitral tribunal decides that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under in Article 15.15.

CHAPTER 5 CUSTOMS PROCEDURES

Article 5.1: Definitions
For the purposes of this Chapter:
customs law means any legislation administered, applied or enforced by the customs administration of a Party; customs offence means any breach or attempted breach of customs law; customs procedures means the treatment applied by the customs administration of each Party to goods, which are subject to customs control.

Article 5.2: Objectives
The objectives of this Chapter of the Agreement are to:
(a) ensure predictability, consistency and transparency in the application of customs laws and other customs administrative policies of the Parties;
(b) ensure efficient, economical administration of customs procedures, and the expeditious clearance of goods;
(c) facilitate trade among the Parties;
(d) apply simplified customs procedures; and
(e) promote cooperation among the customs administrations.

Article 5.3: Scope
This Chapter shall apply, in accordance with each Party's respective international obligations and customs law, to customs procedures applied to goods traded among the Parties.

Article 5.4: Customs Procedures and Facilitation
1. Customs procedures of the Parties shall, where possible and to the extent permitted by their respective customs law, conform with the standards and recommended practices of the World Customs Organisation, including the principles of the International Convention on the Simplification and Harmonisation of Customs Procedures.

2. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade.

3. The customs administrations of the Parties shall periodically review their customs procedures with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate trade.

Article 5.5: Customs Cooperation
1. To the extent permitted by their domestic law, the customs administrations of the Parties may, as they deem fit, assist each other, in relation to originating goods, by providing information on the following:

(a) the implementation and operation of this Chapter;
(b) the movement of goods among the Parties;
(c) investigation and prevention of prima facie customs offences;
(d) developing and implementing customs best practice and risk management techniques;
(e) simplifying and expediting customs procedures;
(f) advancing technical skills and the use of technology;
(g) application of the Customs Valuation Agreement; and
(h) additional assistance in respect to other matters.

2. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information.

Article 5.6: Customs Valuation
The Parties shall determine the customs value of goods traded among them in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 5.7: Advance Rulings
1. Each Party, through its customs administration, shall provide in writing advance rulings in respect of the tariff classification and origin of goods and whether a good qualifies for entry free of customs duty in accordance with Article 3.5 (Goods Re-entered After Repair or Alteration) (hereinafter referred to as “advance rulings”), to a person described in Subparagraph 2(a).

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:
(a) provide that an importer in its territory or an exporter or producer in the territory of another Party may apply for an advance ruling before the importation of goods in question;
(b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to issue an advance ruling;
(c) provide that its customs administration may, at any time during the course of issuing an advance ruling, request that the applicant provide additional information within a specified period;
(d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and
(e) provide that an advance ruling be issued to the applicant expeditiously, or in any case within 60 days of the receipt of all necessary information.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with Subparagraph 2(c) is not provided within a specified time.

4. Subject to Paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within 3 years of the date of that ruling, or such other period as required by that Party's laws.

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law, the information provided is false or inaccurate, if there is a change in domestic law consistent with this Agreement, or there is a change in a material fact, or circumstances on which the ruling is based.

6. Subject to the confidentiality requirements of a Party’s domestic law, each Party shall publish its advance rulings.

7. Where an importer claims that the treatment accorded to an imported good should be governed by an advanced ruling, the customs administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advanced ruling was based.

8 The importing Party may apply measures as provided in Article 5.12.

Article 5.8: Review and Appeal
1. Each Party shall ensure that the importers in its territory have access to:

(a) administrative review independent of the official or office that issued the determination subject to review; and
(b) judicial review of the determination taken at the final level of administrative review, in accordance with the Party's domestic law.

2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.
3. The level of administrative review may include any authority supervising the customs administration.

Article 5.9: Consultation
The customs administrations of the Parties will encourage consultation with each other regarding significant customs issues that affect goods traded among the Parties.

Article 5.10: Paperless Trading
1. The customs administrations shall each endeavour to provide an electronic environment that supports business transactions between it and its trading communities.

2. In implementing initiatives that provide for paperless trading, the customs administrations of the Parties shall take into account the methods developed in APEC and the World Customs Organisation.

Article 5.11: Express Consignments
Each Party shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event that a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express consignments to: (a) (b) (c) provide for pre-arrival processing of information related to express consignments; permit the submission of a single document covering all goods contained in a shipment transported by the express shipment company through electronic means if possible; and minimise, to the extent possible, the documentation required for the release of express consignments.

Article 5.12: Penalties
Each Party shall adopt or maintain measures that provide for the imposition of civil, criminal or administrative penalties, whether solely or in combination, for violations of its customs laws consistent with the provisions of this Chapter.

Article 5.13: Risk Management
1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across their borders the customs administrations shall regularly review these procedures.
2. Where a customs administration deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, the Party shall endeavour to provide a single point for the documentary or electronic processing of all imports and exports.

Article 5.14: Release of Goods
Each Party shall adopt or maintain procedures allowing, to the greatest extent possible, goods to be released:

(a) within 48 hours of arrival; and
(b) at the point of arrival, without temporary transfer to warehouses or other locations.

Article 5.15: Enquiry Points
Each Party shall designate one or more enquiry points to address enquires from interested persons concerning customs matters, and shall make available on the Internet or in print form information concerning procedures for making such enquires.

Article 5.16: Confidentiality
Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its legislation;
(b) be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
(c) impede law enforcement; or
(d) prejudice the competitive position of the person providing the information.

TECHNICAL STANDARDS

Article 8.5: Origin
1. This Chapter applies to all goods traded among the Parties, regardless of the origin of those goods.

2. Notwithstanding Paragraph 1, a Party may give special consideration to goods of a non-Party through the application of a technical regulation, due to the need to avoid the introduction of costly surveillance procedures and as long as the technical regulation is compatible with the TBT Agreement. This shall be notified to the other Parties through the contact points established in Article 8.11(2).

Article 8.11: Technical Cooperation and Committee on Technical Barriers to Trade
1. The Parties hereby establish the Committee on Technical Barriers to Trade (the Committee), which shall comprise officials from the contact points of the Parties.

2. The Parties shall provide each other with the name of the governmental organisation that shall be their contact point and the contact details of relevant officials on that organisation, including telephone, fax, email and other relevant details. The Parties shall notify each other promptly of any change of their contact points or any amendments to the details of the relevant officials.

3. The Committee shall have the responsibility for implementing and monitoring the operation of this Chapter, and in particular:

(a) identifying priority sectors for enhanced cooperation;
(b) establishing work programmes in priority areas;
(c) coordinating participation in work programmes with interested persons and organisations in the territories of the Parties;
(d) monitoring the work programmes;

(e) addressing any issue that a Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;
(f) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;
(g) where appropriate, facilitating sectoral cooperation among governmental and non-governmental accreditation agencies and conformity assessment bodies in the Parties' territories;
(h) exchanging information on developments in non-governmental, regional and multilateral forums engaged in activities related to standardisation, technical regulations and conformity assessment procedures;
(i) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods among them;
(j) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and
(k) reporting to the Commission on the implementation of this Chapter, as it considers appropriate.

4. A Party shall, on request, give favourable consideration to any sector-specific proposal another Party makes for further technical cooperation under this Chapter.

5. The Committee shall conduct meetings to promote and monitor the implementation and administration of this Chapter at least once a year, or more frequently on the request of one of the Parties, via teleconference, video-conference or any other means as mutually determined by the Parties.

6. Where a Party takes a measure to manage an immediate risk that it considers goods covered by an Annex to this Chapter may pose to health, safety or the environment, it shall notify the measure and the reasons for the imposition of the measure to the other Parties, with the time limit as specified in the implementing arrangements.

CHAPTER 7 SANITARY AND PHYTOSANITARY MEASURES

Article 7.1: Definitions

1. For the purposes of this Chapter:

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement.

2. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

3. The relevant definitions developed by the international organisations International Office of Epizootics (OIE), International Plant Protection Convention (IPPC), and Codex Alimentarius Commission apply in the implementation of this Chapter.

Article 7.2: Objectives

The objectives of this Chapter are to:
(a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organizations (OIE, IPPC and Codex Alimentarius Commission);
(b) expand trade opportunities through facilitation of trade among the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the territory of the Parties;

(c) provide a means to improve communication, cooperation and resolution of sanitary and phytosanitary issues; and
(d) establish a mechanism for the recognition of equivalence of sanitary and phytosanitary measures and regionalisation practices maintained by the Parties consistent with the protection of human, plant and animal life or health.

Article 7.3: Scope

1. This Chapter shall apply to all sanitary or phytosanitary measures of a Party that may, directly or indirectly, affect trade among the Parties.

2. Nothing in this Chapter or Implementing Arrangements shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 7.4: Committee on Sanitary and Phytosanitary Matters

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (the Committee) which shall include representatives of the competent authorities of the Parties.

2. The Committee shall meet within one year of the entry into force of this Agreement and at least annually thereafter or as mutually determined by the Parties. The Committee shall establish its rules of procedure at its first meeting. It shall meet in person, teleconference, video conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence.

3. The Committee may agree to establish technical working groups consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from this Chapter. When additional expertise is needed, the membership of these groups need not be restricted to representatives of the Parties.

4. The Committee shall consider any matters relating to the implementation of the Chapter including:
(a) establishing, monitoring and reviewing work plans; and
(b) initiating, developing, adopting, reviewing and modifying Implementing Arrangements on technical matters which further elaborate the provisions of this Chapter in order to facilitate trade among the Parties.

5. The Implementing Arrangements referred to in Paragraph 4(b) shall include the following:

(a) Competent Authorities and Contact Points (Implementing Arrangement 1);
(b) Diseases and Pests for which Regionalisation Decisions can be Taken (Implementing Arrangement 2);
(c) Criteria for Regionalisation Decisions (Implementing Arrangement 3);
(d) Recognition of Measures (Implementing Arrangement 4);
(e) Guidelines for Conducting an Audit (Implementing Arrangement 5);
(f) Certification (Implementing Arrangement 6);
(g) Import Checks (Implementing Arrangement 7); and
(h) Equivalence: Procedures for Determination (Implementing Arrangement 8).

6. Each Party responsible for the implementation of an Implementing Arrangement shall take all necessary actions to implement such Arrangement within three months following its adoption, unless otherwise agreed by the relevant Parties.

7. The Committee shall report to the Commission on the implementation of this Chapter.

Article 7.5: Competent Authorities and Contact Points
1. The competent authorities responsible for the implementation of the measures referred to in this Chapter are listed in Implementing Arrangement 1. The contact points that have the responsibilities relating to notification are also set out in Implementing Arrangement 1.

2. The Parties shall inform each other of any significant changes in the structure, organisation and division of the competency of its competent authorities or contact points.

Article 7.6: Adaptation to Regional Conditions
1. Where a Party has an area or part of its territory free of a disease or pest, the Parties may agree in accordance with Implementing Arrangement 3, to list this status and the measures in place in Implementing Arrangement 2 to ensure that the disease or pest free status will be maintained in the event of an incursion.

2. In the event of an incursion of a disease or pest specified in Implementing Arrangement 2, the importing Party shall recognise the exporting Party's measures specified in Implementing Arrangement 2 for the purpose of facilitating trade among the Parties. 3. The Parties may agree to list additional diseases or pests in Implementing Arrangement 2, in accordance with the criteria specified in Implementing Arrangement 3.

4. Where one of the Parties considers that it has a special status with respect to a specific disease or pest, it may request recognition of this status. The Party concerned may also request specific guarantees in respect of imports of animals and animal products, plants and plant products, and other related goods appropriate to the agreed status. The guarantees for specific diseases and pests shall be specified in Implementing Arrangement 4.

Article 7.7: Equivalence
1. Equivalence may be recognised by the Parties in relation to an individual measure and/or groups of measures and/or systems applicable to a sector or part of a sector as specified in Implementing Arrangement 4. The equivalence determinations recorded in Implementing Arrangement 4 shall be applied to trade among the relevant Parties in animals and animal products, plants and plant products, or as appropriate to related goods.

2. The recognition of equivalence requires an assessment and acceptance of:

(a) the legislation, standards and procedures, as well as the programmes in place to allow control and to ensure domestic and importing country requirements are met;
(b) the documented structure of the competent authority(ies), their powers, their chain of command, their modus operandi and the resources available to them; and
(c) the performance of the competent authority in relation to the control and assurance programmes.

In this assessment, the Parties shall take account of experience already acquired.

3. The importing Party shall accept the sanitary or phytosanitary measure of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection. In reaching a determination of whether a sanitary or phytosanitary measure applied by an exporting Party achieves the importing Party's appropriate level of protection, those Parties shall follow the process specified in Implementing Arrangement 8. The Parties may add to or amend the steps in the process in the future as the Parties' experience in regard to the determination of equivalence process increases.

4. Where equivalence has not been recognised or where an application is pending, trade shall take place under the conditions required by the importing Party to meet its appropriate level of protection. These conditions shall be as set out

in Implementing Arrangement 4 where such conditions have been agreed. If conditions have not been agreed and incorporated in Implementing Arrangement 4, then the conditions to be met by the exporting Party shall be those specified by the importing Party. The exporting Party may agree to meet the importing Party's conditions, without affecting the result of the process set out in Implementing Arrangement 8.

5. Implementing Arrangement 4 may list :

(a) those individual measures and/or groups of measures and/or systems applicable to a sector or part of a sector, for which the respective sanitary or phytosanitary measures are recognised as equivalent for trade purposes;
(b) actions to enable the assessment of equivalence to be completed in accordance with the process set out in Implementing Arrangement 8, and by the date indicated in Implementing Arrangement 4, or if not indicated, as specified by the importing Party; or
(c) the specific guarantees related to recognition of special status provided for Article 7.6(4); and
(d) may also list those sectors, or parts of sectors, for which the Parties apply differing sanitary or phytosanitary measures and have not concluded the determination provided for in Paragraph 3.

6. Unless otherwise agreed among the relevant Parties, an official sanitary or phytosanitary certificate will be required for each consignment of animals and animal products, plants and plant products, or other related goods intended for import and for which equivalence has been recognised. The model attestation for such certificates will be prescribed in Implementing Arrangement 6. The Parties may jointly determine principles or guidelines for certification, which shall be included in Implementing Arrangement 6.

Article 7.8: Verification

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right to carry out audit and verification of the procedures of the exporting Party, which may include an assessment of all or part of the competent authorities' total control programme, including, where appropriate:

(a) reviews of the inspection and audit programmes; and
(b) on-site checks.

These procedures shall be carried out in accordance with the provisions of Implementing Arrangement 5.

2. Each Party shall also have the right to carry out import checks for the purposes of implementing sanitary and phytosanitary measures on consignments on importation, consistent with Article 7.9, the results of which form part of the verification process.

3. With the consent of the importing and exporting Parties, a Party may:
(a) share the results and conclusions of its audit and verification procedures and checks with non-Parties; or
(b) use the results and conclusions of the audit and verification procedures and checks of non-Parties.

Article 7.9: Import Checks

1. The import checks applied to imported animals and animal products, plants and plant products, or other related goods shall be based on the risk associated with such importations. They shall be carried out without undue delay and with a minimum effect on trade between the Parties.

2. The frequencies of import checks on such importations shall be made available on request and where set out in Implementing Arrangement 7 shall be applied accordingly. The Parties may amend the frequencies, within their

responsibilities, as appropriate, as a result of progress made in accordance with Implementing Arrangement 4, or as a result of other actions or consultations provided for in this Chapter.

3. In the event that the import checks reveal non-conformity with the relevant standards and/or requirements, the action taken by the importing Party should be based on an assessment of the risk involved. Wherever possible, the importer or their representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision.

Article 7.10: Notifications

1. The Parties shall notify each other in writing through the contacts points set out in Implementing Arrangement 1 of:

> (a) significant changes in health status including the presence and evolution of diseases or pests in Implementing Arrangement 2, in a timely and appropriate manner so as to ensure continued confidence in the competence of the Party with respect to the management of any risks of transmission to one of the other Parties which may arise as a consequence;
> (b) scientific findings of importance with respect to diseases or pests which are not in Implementing Arrangement 2 or new diseases or pests without delay; and
> (c) any additional measures beyond the basic requirements of their respective sanitary or phytosanitary measures taken to control or eradicate diseases or pests or to protect public health, and any changes in preventive policies, including vaccination policies.

2. In cases of serious and immediate concern with respect to human, animal or plant life or health, immediate oral notification shall be made to the contact points and written confirmation should follow within 24 hours.

3. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, consultations regarding the situation shall, on request, take place as soon as possible, and in any case within 13 days unless otherwise agreed between the Parties. Each Party shall endeavour in such situations to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution.

4. Where in the case of products subject to sanitary or phytosanitary measures, there is non-conformity with the relevant standards and/or requirements, the importing Party shall notify the exporting Party as soon as possible of the non-conformity as set out in Implementing Arrangement 7.

Article 7.11: Provisional Measures

Without prejudice to Article 7.10, and in particular Article 7.10(3), any Party may, on serious human, animal or plant life or health grounds, adopt provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified within 24 hours to the other Parties and, on request, consultations regarding the situation shall be held within 13 days unless otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

Article 7.12: Exchange of Information

1. The Parties, through the contacts points set out in Implementing Arrangement 1, shall exchange information relevant to the implementation of this Chapter on a uniform and systematic basis, to provide assurance, engender mutual confidence and demonstrate the efficacy of the programmes controlled. Where appropriate, achievements of these objectives may be enhanced by exchanges of officials.

2. The information exchange on changes in the respective sanitary or phytosanitary measures, and other relevant information, shall include:

(a) opportunity to consider proposals for changes in regulatory standards or requirements which may affect this Chapter in advance of their finalisation;
(b) briefing on current developments affecting trade; and
(c) information on the results of the verification procedures provided for in Article 7.8.

3. The Parties may provide for the sharing of scientific papers or data to relevant scientific forums on sanitary or phytosanitary measures and related matters.

Article 7.13: Technical Consultation
1. A Party may initiate consultations with another Party with the aim of resolving issues on the application of measures covered in this Chapter or interpretation of the provisions of this Chapter.

2. Where a Party requests consultations, these consultations shall take place as soon as practicable.

3. If a Party considers it necessary, it may request that the Committee facilitate such consultations. The Committee may refer the issues to an ad hoc working group for further discussion. The ad hoc working group may make a recommendation to the Committee on the resolution of the issues. The Committee shall discuss the recommendation with a view to resolving the issue without undue delay.

4. Such consultations are without prejudice to the rights and obligations of the Parties under Chapter 15 (Dispute Settlement).

Article 7.14: Cooperation
1. The Parties shall explore opportunities for further cooperation and collaboration on sanitary or phytosanitary matters of mutual interest consistent with the provisions of this Chapter.

2. The Parties acknowledge that the provisions of Chapter 16 (Strategic Partnership) and its accompanying Implementing Arrangement relating to primary industry matters will be of relevance to the implementation of this Chapter.

3. The Parties agree to cooperate together to facilitate the implementation of this Chapter, and in particular the development of this Chapter's Implementing Arrangements.

CHAPTER 10 INTELLECTUAL PROPERTY

Article 10.1: Definitions
For the purposes of this Chapter:

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement;

Intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement namely: copyright and related rights; trade marks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; protection of undisclosed information.3

[3] For the purpose of this Chapter "intellectual property" also includes the protection of plant varieties.

Article 10.2: Intellectual Property Principles

1. The Parties recognise the importance of intellectual property in promoting economic and social development, particularly in the new digital economy, technological innovation and trade.

2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

3. The Parties are committed to the maintenance of intellectual property rights regimes and systems that seek to:

(a) facilitate international trade, economic and social development through the dissemination of ideas, technology and creative works;
(b) provide certainty for right-holders and users of intellectual property over the protection and enforcement of intellectual property rights; and
(c) facilitate the enforcement of intellectual property rights with the view, inter alia, to eliminate trade in goods infringing intellectual property rights.

Article 10.3: General Provisions

1. The Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which they are party. To this end, nothing in this Chapter shall derogate from existing rights and obligations that Parties have to each other under the TRIPS Agreement or other multilateral intellectual property agreements.

2. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with this Agreement. In particular, nothing in this Chapter shall prevent a Party from adopting measures necessary to prevent anti-competitive practices that may result from the abuse of intellectual property rights.

3. Subject to each Party's international obligations the Parties affirm that they may:

(a) provide for the international exhaustion of intellectual property rights;
(b) establish that provisions in standard form non-negotiated licenses for products do not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws;
(c) establish provisions to facilitate the exercise of permitted acts where technological measures have been applied; and
(d) establish appropriate measures to protect traditional knowledge.

4. The Parties shall provide for reproduction rights and communication to the public rights to copyright owners and phonogram producers that are consistent with the World Intellectual Property Organization Copyright Treaty (WCT) and the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT). The Parties shall provide performers' rights consistent with the TRIPS Agreement. The Parties may establish limitations and exceptions in their domestic laws as acceptable under the Berne Convention for the Protection of Literary and Artistic Works (1971), the TRIPS Agreement, the WCT and the WPPT. These provisions shall be understood to permit Parties to devise new exceptions and limitations that are appropriate in the digital environment.

5. Subject to their obligations under the TRIPS Agreement, each Party may limit the rights of the performers and producers of phonograms and broadcasting entities of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.

Article 10.4: Trade Marks
1. Each Party shall afford an opportunity for interested parties to oppose the application of a trade mark and request cancellation of a registered trade mark.

2. In relation to trade marks, Parties are encouraged to classify goods and services according to the classification of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979).

Article 10.5: Geographical Indications
1. The terms listed in Annex 10.A are recognised as geographical indications for wines and spirits in the respective Party, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to domestic laws,4 in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territories of the other Parties.

2. At the request of a Party, the Commission may decide to add or remove geographical indications from Annex 10.A.

Article 10.6: Country Names
The Parties shall provide the legal means for interested parties to prevent commercial use of country names of the Parties in relation to goods in a manner which misleads consumers as to the origin of such goods.

Article 10.7: Cooperation
The Parties agree to cooperate, consistent with the principles set out in Article 10.2. Such cooperation may include, inter alia:

(a) the notification of contact points for the enforcement of intellectual property rights;
(b) exchange of information relating to developments in intellectual property policy in their respective agencies. Such developments may include, but are not limited to, the implementation of appropriate limitations and exceptions under copyright law and the implementation of measures concerning the appropriate protection of digital rights management information;
(c) exchange of information on the implementation of intellectual property systems, aimed at promoting the efficient registration of intellectual property rights;
(d) promotion of the development of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other organisations with an interest in the field of intellectual property rights;
(e) policy dialogue on initiatives on intellectual property in multilateral and regional forums;
(f) exchange of information and cooperation on appropriate initiatives to promote awareness of intellectual property rights and systems; and
(g) such other activities and initiatives as may be mutually determined among the Parties.

AGRICULTURAL MARKET ACCESS

Article 3.4: Elimination of Customs Duties
1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

[4] For greater certainty, the Parties acknowledge that geographical indications will be recognised and protected in Brunei Darussalam, Chile, New Zealand and Singapore only to the extent permitted by and according to the terms and conditions set out in their respective domestic laws.

2. Except as otherwise provided in this Agreement, and subject to a Party's Schedule as set out in Annex I, as at the date of entry into force of this Agreement each Party shall eliminate all customs duties on originating goods of another Party.
3. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between two or more of the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each Party in accordance with Article 17.2 (Functions of the Commission). Any such acceleration shall be extended to all Parties.

FINANCIAL SERVICES
Article 20.2: Financial Services Negotiations
Unless otherwise agreed, no later than 2 years after the entry into force of this Agreement the Parties shall commence negotiations with a view to including a self-contained chapter on financial services in this Agreement on a mutually advantageous basis.

Annex 4.D
TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT
CERTIFICATE OF ORIGIN

Issuing Number:

1: Exporter (Name and Address)
Tax ID No:

2: Producer (Name and Address)
Tax ID No:

3: Importer (Name and Address)

4. Description of Good(s)	5. HS No.	6. Preference Criterion	7. Producer	8. Regional Value Content	9. Country of Origin

10: Certification of Origin
I certify that:
 The information on this document is true and accurate and I assume the responsibility for providing such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.
 I agree to maintain and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that could affect the accuracy or validity of this certificate.
 The goods originated in the territory of the Parties, and comply with the origin requirements specified for those goods in TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT, and there has been no further production or any other operation outside the territories of the Parties in accordance with Article 4.11 of the Agreement.

Authorised Signature
Name (Print or Type)
Date (DD/MM/YY)

Company Name
Title
Telephone / Fax /E-mail

4-21
TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT

CERTIFICATE OF ORIGIN INSTRUCTIONS
Pursuant to Article 4.13, for the purposes of obtaining preferential tariff treatment this document must be completed legibly and in full by the exporter or producer and be in the possession of the importer at the time the declaration is made. Please print or type:

Issuing Number: Fill in the serial number of the certificate of origin.
Field 1: State the full legal name, address (including country) and legal tax identification number of the exporter. The legal tax identification number in Chile is the Unique Tax Number (“Rol Unico Tributario”). The tax identification number is not applicable for Brunei Darussalam, New Zealand and Singapore.
Field 2: If one producer, state the full legal name, address (including country, telephone number, fax number and email address) and legal tax identification number, as defined in Field 1, of said producer. (Tax ID is not applicable to Brunei Darussalam, New Zealand and Singapore.) If more than one producer is included on the Certificate, state "Various" and attach a list of all producers, including their legal name, address (including country, telephone number, fax number and email address) and legal tax identification number, cross referenced to the good or goods described in Field 4. If you wish this information to be confidential, it is acceptable to state " Available to Customs upon request". If the producer and the exporter are the same, complete field with "SAME". If the producer is unknown, it is acceptable to state "UNKNOWN".
Field 3: State the full legal name, address (including country) as defined in Field 1, of the importer; if the importer is not known, state "UNKNOWN"; if multiple importers, state "VARIOUS".
Field 4: Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (HS) description of the good.
Field 5: For each good described in Field 4, identify the HS tariff classification to six digits.
Field 6: For each good described in Field 4, state which criterion (1 through 3) is applicable. The rules of origin are contained in Chapter 4 and Annex II of the Agreement. NOTE: In order to be entitled to preferential tariff treatment, each good must meet at least one of the criteria below.
Preference Criteria

A The good is "wholly obtained or produced entirely" in the territory of one or more of the Parties, as referred to in Article 4.1 and 4.2 of the Agreement. NOTE: The purchase of a good in the territory does not necessarily render it "wholly obtained or produced".
B The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials. All materials used in the production of the good must qualify as "originating" by meeting the rules of Chapter 4 of the Agreement.
C The good is produced entirely in the territory of one or more of the Parties and satisfies the specific rule of origin set out in Annex II of the Agreement (Specific Rules of Origin) that applies to its tariff classification as referred to in Article 4.2, or the provisions under Article 4.12 of the Agreement. The rule may include a tariff classification change, regional value-content requirement and a combination thereof, or specific process requirement. The good must also satisfy all other applicable requirements of Chapter 4 (Rules of Origin) of the Agreement.

Field 7: For each good described in Field 4, state "YES" if you are the producer of the good. If you are not the producer of the good, state "NO" followed by (1) or (2), depending on whether this certificate was based upon: (1) your knowledge of whether the good qualifies as an originating good; (2) Issued by the producer's written Declaration of Origin, which is completed and signed by the producer and voluntarily provided to the exporter by the producer.
Field 8: For each good described in Field 4, where the good is subject to a regional value content (RVC) requirement stipulated in the Agreement, indicate the percentage.

Field 9: Identify the name of the country. ("BN" for all goods originating from Brunei Darussalam, "CL" for all goods originating from Chile, "NZ" for all goods originating from New Zealand, "SG" for all goods originating from Singapore)
Field 10: This field must be completed, signed and dated by the exporter or producer. The date must be the date the Certificate was completed and signed.

MOVEMENT OF LABOR

Article 12.3: Scope
1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services.

2. This Chapter shall not apply to:
(a) financial services as defined in Annex 12.A;
(b) government procurement, which means any law, regulation, policy, or procedure of general application governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;5
(c) services supplied in the exercise of governmental authority;
(d) subsidies or grants provided by a Party or a state enterprise,6or any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;
(e) measures affecting natural persons seeking access to the employment market of a Party; or
(f) measures regarding citizenship, nationality, residence or employment on a permanent basis.
3. This Chapter shall not apply to air transport services, whether scheduled or non-scheduled, or to related services in support of air services,7 other than the following:

(a) aircraft repair and maintenance services during which an aircraft is
withdrawn from service;
(b) the selling and marketing of air transport services;
(c) computer reservation system services;
(d) speciality air services; and
(e) international air transportation services as set out in the Multilateral Agreement on the Liberalisation of International Air Transportation (MALIAT), and, to the extent that there are any inconsistencies between this Agreement and those of the MALIAT, the rights and obligations under the MALIAT at any given time shall prevail.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to that other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying benefits under this Chapter.

[5] In the event of any inconsistency between this Chapter and Chapter 11 (Government Procurement) the latter Chapter shall prevail to the extent of the inconsistency.

[6] This includes government supported loans, guarantees, and insurance.
[7] For example, ground handling services.

CHAPTER 19: TRANSPARENCY

ARTICLE 19.1: DEFINITIONS

For purposes of this Chapter:

Administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or
(b) a ruling that adjudicates with respect to a particular act or practice.

ARTICLE 19.2: CONTACT POINTS

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other Party, the contact points shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

ARTICLE 19.3: PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such laws, regulations, procedures, and administrative rulings that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

ARTICLE 19.4: NOTIFICATION AND PROVISION OF INFORMATION

1. To the maximum extent possible, each Party shall notify the other Party of any actual or proposed measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3 Any notification, request, or information under this Article shall be provided to the other Party through the relevant contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 19.5: ADMINISTRATIVE PROCEEDINGS

1. With a view to administering in a consistent, impartial, and reasonable manner all measures referred to in Article 19.3, each Party shall ensure that in its administrative proceedings applying such measures to particular persons, goods, or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

ARTICLE 19.6: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions1 regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

CHAPTER 20: ADMINISTRATION AND DISPUTE SETTLEMENT

ARTICLE 20.1 : JOINT COMMITTEE

1. The Parties hereby establish a Joint Committee to supervise the implementation of this Agreement and to review the trade relationship between the Parties.

(a) The Joint Committee shall be composed of government officials of each Party and shall be chaired by (i) the United States Trade Representative and (ii) Singapore's Minister for Trade and Industry or their designees.

1 For greater certainty, the correction of final administrative actions includes a referral back to the body that took such action for corrective action

(b) The Joint Committee may establish and delegate responsibilities to ad hoc and standing committees or working groups, and seek the advice of non-governmental persons or groups.

2. The Joint Committee shall:

(a) review the general functioning of this Agreement;

(b) review and consider specific matters related to the operation and implementation of this Agreement in the light of its objectives, such as those related to customs administration, technical barriers to trade, electronic commerce, the environment, labor, the Medical Products Working Group, and distilled spirits;

(c) facilitate the avoidance and settlement of disputes arising under this Agreement, including through consultations pursuant to Articles 20.3 and 20.4;

(d) consider and adopt any amendment to this Agreement or other modification to the commitments therein, subject to completion of necessary domestic legal
procedures by each Party;

(e) as appropriate, issue interpretations of this Agreement, including as provided in Articles 15.21 (Governing Law) and 15.22 (Interpretation of Annexes);

(f) consider ways to further enhance trade relations between the Parties and to further the objectives of this Agreement; and

(g) take such other action as the Parties may agree.

3. At its first meeting, the Joint Committee shall consider the review performed by each
Party of the environmental effects of this Agreement and shall provide the public an opportunity to provide views on those effects.

4. The Joint Committee shall establish its own rules of procedure.

5. Unless the Parties otherwise agree, the Joint Committee shall convene:

(a) in regular session every year in order to review the general functioning of the Agreement, with such sessions to be held alternately in the territory of each Party; and

(b) in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as may be agreed by the Parties. A requirement under Article 20.4 that the Joint Committee take any action with regard to a dispute shall not be interpreted to require the convening of a special session of the Joint Committee.

6. Recognizing the importance of transparency and openness, the Parties reaffirm their respective practices of considering the views of members of the public in order to draw upon a broad range of perspectives in the implementation of this Agreement.

7. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee on the same basis as the Party providing the information.

ARTICLE 20.2: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

1. Each Party shall:

(a) designate an office that shall be responsible for providing administrative assistance to panels established under Article 20.4;

(b) be responsible for the operation and costs of its designated office; and

(c) notify the other Party of the location of its office.

2. The Joint Committee shall establish the amounts of remuneration and expenses to be paid to panelists.

3. The remuneration of panelists and their assistants, their travel and lodging expenses, and all general expenses relating to proceedings of a panel established under Article 20.4 shall be borne equally by the Parties.

4. Each panelist shall keep a record and render a final account of the panelist's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

ARTICLE 20.3: CONSULTATIONS

1. Except as otherwise provided in this Agreement, either Party may request consultations with the other Party with respect to any matter that it considers might affect the operation of this Agreement by delivering written notification to the other Party's office designated under Article 20.2.1(a). If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.

2. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

3. In the consultations, each Party shall:

(a) provide sufficient information to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

ARTICLE 20.4: ADDITIONAL DISPUTE SETTLEMENT PROCEDURES

1. Except as otherwise provided in this Agreement or as the Parties otherwise agree, the provisions of this Article shall apply wherever a Party considers that:

(a) a measure of the other Party is inconsistent with the obligations of this Agreement;

(b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

(c) a benefit the Party could reasonably have expected to accrue to it under Chapters 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin),Chapter 8 (Cross Border Trade in Services), or Chapter 16 (Intellectual Property Rights) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. (a) The Parties shall first seek to resolve a dispute described in paragraph 1 through consultations under Article 20.3. If the consultations fail to resolve the dispute within 60 days of the delivery of a Party's request for consultations under Article 20.3.1, either Party may, by delivering written notification to the other Party's office designated under Article 20.2.1(a), refer the matter to the Joint Committee, which shall endeavor to resolve the dispute.

(b) Subject to Article 20.3.3(b), promptly after requesting or receiving a request for consultations related to a matter identified in paragraph 1, each Party shall solicit and consider the views of members of the public in order to draw upon a broad range of perspectives.

3. (a) Where a dispute regarding any matter referred to in paragraph 1 arises under this Agreement and under the WTO Agreement, or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

(b) The complaining Party shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.

(c) Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other possible fora.

(d) For the purposes of this paragraph, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel.

4. (a) If the Joint Committee has not resolved a dispute within 60 days after delivery of the notification described in paragraph 2(a) or within such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party's office designated under Article 20.2.1(a).[2] Unless the Parties otherwise agree:

(i) The panel shall have three members.

(ii) Each Party shall appoint one panelist, in consultation with the other Party, within 30 days after the matter has been referred to a panel. If a Party fails to appoint a panelist within such period, a panelist shall be selected by lot from the contingent list established under subparagraph (b) to serve as the panelist appointed by that Party.

(iii) The Parties shall endeavor to agree on a third panelist who shall serve as chair.

(iv) If the Parties are unable to agree on the chair of the Panel within 30 days after the date on which the second panelist has been appointed, the chair shall be selected by lot from the contingent list established under subparagraph (b).

2 This paragraph is subject to the letter referred to in Article 15.26(c) (Status of Letter Exchanges).

(v) The date of establishment of the panel shall be the date on which the chair is appointed.

(b) (i) By the date of entry into force of this Agreement, the Parties shall establish a contingent list of five individuals who are willing and able to serve as a panelist or chair.

(ii) Each such individual shall have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreements; shall be independent of, and not be affiliated with or take instructions from, any Party; and shall comply with the code of conduct to be established by the Joint Committee.

(iii) Individuals on the contingent list shall be appointed by agreement of the Parties for terms of three years, and may be reappointed.

(c) Panelists other than those chosen by lot from the contingent list shall meet the criteria set out in subparagraph (b)(ii) and have expertise or experience relevant to the subject matter that is under dispute.

(d) The Parties shall establish by the date of entry into force of this Agreement model rules of procedure, which shall ensure:

(i) a right to at least one hearing before the panel, which, subject to clause

(vi), shall be open to the public;

(ii) an opportunity for each Party to provide initial and rebuttal submissions;

(iii) that each Party's written submissions, written versions of its oral

statement, and written responses to a request or questions from the panel will be made public within ten days after they are submitted, subject to clause (vi);

(iv) that the panel shall consider requests from nongovernmental entities in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;

(v) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to paragraph 5(a); and

(vi) the protection of confidential information.

Unless the Parties agree otherwise, the panel shall follow the model rules of procedure and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules.

5. (a) Unless the Parties agree otherwise, the panel shall, within 150 days after the chair is appointed, present to the Parties an initial report containing findings of fact and its determination as to whether:

(i) the measure at issue is inconsistent with the obligations of this Agreement;

(ii) a Party has otherwise failed to carry out its obligations under this Agreement; or

(iii) the measure at issue causes a nullification or impairment described in subparagraph 1(c); as well as any other determination requested by both Parties with regard to the dispute.

(b) The panel shall base its report on the submissions and arguments of the Parties. The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.

(c) After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

(d) The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise. The Parties shall release the final report to the public within 15 days thereafter, subject to the protection ofconfidential information.

ARTICLE 20.5: IMPLEMENTATION OF THE FINAL REPORT

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 20.4.1(c), the resolution, whenever possible, shall be to eliminate the nonconformity or the nullification or impairment.

ARTICLE 20.6: NON-IMPLEMENTATION

1. If a panel has made a determination of the type described in Article 20.5.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 20.5.1 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.

2. If the Parties:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 20.5.1 and the complaining Party considers that the other Party has failed to observe the terms of such agreement, the complaining Party may at any time thereafter provide written notice to the office designated by the other Party pursuant to Article 20.2.1(a) that it intends to suspend the application to the other Party of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice to the other Party's designated office under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

(a) the level of benefits that the other Party has proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the office designated by the other Party pursuant to Article 20.2.1(a). The panel shall reconvene as soon as possible after delivery of the request to the designated office and shall present its determination to the Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party's office designated pursuant to Article 20.2.1(a) that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

6. Unless the Joint Committee otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Singaporean currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Joint Committee may decide that an assessment shall be paid into a fund established by the Joint Committee and expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under the Agreement.

7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

8. This Article shall not apply with respect to a matter described in Article 20.7.1.

ARTICLE 20.7: NON-IMPLEMENTATION IN CERTAIN DISPUTES

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 17.2.1(a) (Application and Enforcement of Labor Laws) or Article 18.2.1(a) (Application and Enforcement of Environmental Laws), and the Parties:

(a) are unable to reach agreement on a resolution pursuant to Article 20.5.1 within 45 days of receiving the final report; or

(b) have agreed on a resolution pursuant to Article 20.5.1 and the complaining Party considers that the other Party has failed to observe the terms of the agreement, the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. The complaining

Party shall deliver its request in writing to the office designated by the other Party pursuant to Article 20.2.1(a). The panel shall reconvene as soon as possible after delivery of the request to the designated office.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

(a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;

(b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;

(c) the reasons for the Party's failure to effectively enforce the relevant law;

(d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;

(e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel; and

(f) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex 20A.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any other time thereafter, the complaining Party may provide notice in writing to the office designated by the other Party pursuant to Article 20.2.1(a) demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. currency, or in an equivalent amount of Singaporean currency, in equal, quarterly installments beginning on the later of:

(a) 60 days after the date on which the panel determines the amount; or
(b) 60 days after the complaining Party provides the notice described in this paragraph.

4. Assessments shall be paid into a fund established by the Joint Committee and shall be expended at the direction of the Joint Committee for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Joint Committee shall consider the views of interested persons in the Parties' territories.

5. If the Party complained against fails to pay a monetary assessment, and if the Party has created and funded an escrow account to ensure payment of any assessments against it, the other Party shall, before having recourse to any other measure, seek to obtain the funds from the account.

6. If the complaining Party cannot obtain the funds from the other Party's escrow account within 30 days of the date on which payment is due, or if the other Party has not created an escrow account, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

ARTICLE 20.8: COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 20.6.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the office designated by the other Party pursuant to Article 20.2.1(a). The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.6 or 20.7 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 20.6.5 or that has been imposed on it under Article 20.7.

ARTICLE 20.9 : FIVE-YEAR REVIEW

The Joint Committee shall review the operation and effectiveness of Articles 20.6 and 20.7 not later than five years after the date of entry into force of this Agreement, or within six months after benefits have been suspended or monetary assessments have been imposed in five proceedings initiated under this Chapter, whichever occurs first.

ARTICLE 20.10: PRIVATE RIGHTS

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ANNEX 20A
INFLATION ADJUSTMENT FORMULA FOR MONETARY ASSESSMENTS

1. An annual monetary assessment imposed before December 31, 2004 shall not exceed 15 million U.S. dollars.

2. Beginning January 1, 2005, the 15 million U.S. dollar annual cap shall be adjusted for inflation in accordance with paragraphs 3 through 5.

3. The period used for the accumulated inflation adjustment shall be calendar year 2003 through the most recent calendar year preceding the one in which the assessment is owed.

4. The relevant inflation rate shall be the U.S. inflation rate as measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics.

5. The inflation adjustment shall be estimated according to the following formula:

$15 million x (1+ □*i*) = A □*i* = accumulated U.S. inflation rate from calendar year 2003 through the most recent calendar year preceding the one in which the assessment is owed.

A = cap for the assessment for the year in question.

CHAPTER 4: CUSTOMS ADMINISTRATION

ARTICLE 4.1: PUBLICATION AND NOTIFICATION

1. Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, either on the Internet or in print form.

2. Each Party shall designate, establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall make available on the Internet information concerning procedures for making such inquiries.

3. To the extent possible, each Party shall:

(a) publish in advance any regulation governing customs matters that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

4. Nothing in this Article shall require a Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting technologies, if the Party considers that publication would impede law enforcement.

ARTICLE 4.2: ADMINISTRATION

1. Each Party shall administer in a uniform, impartial, and reasonable manner all its laws, regulations, decisions, and rulings governing customs matters.

2. Each Party shall ensure that its laws and regulations governing customs matters are not prepared, adopted, or applied with a view to or with the effect of creating arbitrary or unwarranted procedural obstacles to international trade.

ARTICLE 4.3: ADVANCE RULINGS

1. Each Party shall provide for the issuance of written advance rulings to a person described in subparagraph 2(a) concerning tariff classification, questions arising from the application of the Customs Valuation Agreement, country of origin, and the qualification of a good as an originating good under this Agreement.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings that:

(a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may request such a ruling prior to the importation in question;

(b) include a detailed description of the information required to process a request for an advance ruling; and

(c) provide that the advance ruling be based on the facts and circumstances presented by the person requesting the ruling.

3. Each Party shall provide that its customs authorities:

(a) may request, at any time during the course of evaluating a request for an advance ruling, additional information necessary to evaluate the request;

(b) shall issue the advance ruling expeditiously, and within 120 days after obtaining all necessary information; and

(c) shall provide, upon request of the person who requested the advance ruling, a full explanation of the reasons for the ruling

.

4. Subject to paragraph 5, each Party shall apply an advance ruling to importations into its territory beginning on the date of issuance of the ruling or such date as may be specified in the ruling. The treatment provided by the advance ruling shall be applied to importations without regard to the identity of the importer, exporter, or producer, provided that the facts and circumstances are identical in all material respects.

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law, or if there is a change in law consistent with this Agreement, a material fact, or circumstances on which the ruling is

based. The issuing Party shall postpone the effective date of such modification or revocation for a period of not less than 60 days where the person to whom the ruling was issued has relied in good faith on that ruling.

ARTICLE 4.4: REVIEW AND APPEAL

1. With respect to determinations relating to customs matters, each Party shall provide that importers in its territory have access to:

(a) at least one level of administrative review of determinations by its customs authorities independent of the official or office responsible for the decision under review;[3] and

(b) judicial review of decisions taken at the final level of administrative review.

ARTICLE 4.5: COOPERATION

1. Each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall through their competent authorities and in accordance with this Chapter, cooperate in achieving compliance with their respective laws or regulations pertaining to:

(a) implementation and operation of this Agreement;
(b) restrictions and prohibitions on imports or exports; and
(c) other issues that the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, it may request the other Party to provide the following types of information pertaining to trade transactions relevant to that activity that took place no more than five years before the date of the request, or from the date of discovery of the apparent offense in cases of fraud and in other cases on which the Parties may agree:

(a) the name and address of the importer, exporter, manufacturer, buyer, vendor, broker, or transporter;

(b) shipping information relating to container number, size, port of loading before arrival, destination port after departure, name of vessel and carrier, the country of origin, place of export, mode of transportation, port of entry of the goods, and cargo description; and

(c) classification number, quantity, unit of measure, declared value, and tariff treatment.

The requesting Party shall make its request in writing; shall specify the grounds for reasonable suspicion and the purposes for which the information is sought; and shall identify the requested information with sufficient specificity for the other party to locate and provide the information. For example, the requesting Party may identify the importer, exporter, country of origin, the time period, port or ports of entry, cargo description, or Harmonized System number applicable to the importation or exportation in question.

3 For Singapore, this level of administrative review may include the Ministry supervising the Customs authority.

4. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on one or more of the following types of relevant factual information obtained from public or private sources:

(a) historical evidence that a specific importer, exporter, manufacturer, producer, or other company involved in the movement of goods from the territory of one Party to the territory of the other Party has not complied with a Party's laws or
regulations governing importations;

(b) historical evidence that some or all of the enterprises involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector where goods are moving from the territory of one Party to the territory of the other Party has not complied with a Party's laws or regulations governing importations; or

(c) other information that the Parties agree is sufficient in the context of a particular request.

5. The other Party shall respond by providing available information that is material to the request.

6. Each Party shall also endeavor to provide the other Party with any other information that would assist in determining whether imports from or exports to the other Party are in compliance with applicable domestic laws or regulations governing importations, including those related to the prevention or investigation of unlawful shipments.

7. The Parties shall endeavor to provide each other technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing the technical skill of personnel, and enhancing the use of technologies that can lead to improved compliance with laws or regulations governing importations.

8 The Parties shall use their best efforts to explore additional avenues of cooperation for the purpose of enhancing each Party's ability to enforce its laws or regulations governing importations, including by examining the establishment and maintenance of other channels of communication to facilitate the secure and rapid exchange of information, and considering efforts to improve effective coordination on importation issues, building upon the mechanisms established in this Article and the cooperation established under any other relevant agreements.

ARTICLE 4.6: CONFIDENTIALITY

1. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may require written assurances from the other Party prior to forwarding information that such information will be held in confidence, used only for the purposes requested, and not disclosed without specific permission of the Party providing the information, in accordance with its laws and regulations, except where the Parties agree that the information may be used or disclosed for law enforcement purposes or in the
context of judicial proceedings.

2. A Party may decline to provide information requested by the other Party where the other Party has failed to act in conformity with the assurances referred to in paragraph 1.

3. Each Party shall maintain procedures to ensure that confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in connection with the Party's administration of its import and export laws is entitled to treatment as confidential information and protected from unauthorized disclosure.

ARTICLE 4.7: PENALTIES

Each Party shall adopt or maintain measures that provide for the imposition of civil or administrative penalties and, where appropriate, criminal penalties, for violations of its customs laws and regulations governing classification, valuation, country of origin, and eligibility for preferential treatment under this Agreement.

ARTICLE 4.8: RELEASE AND SECURITY

1. Each Party shall adopt or maintain procedures:

(a) providing for the release of goods within a period of time no greater than that required to ensure compliance with its customs laws;

(b) allowing, to the extent possible, goods to be released within 48 hours of arrival;

(c) allowing, to the extent possible, goods to be released at the point of arrival, without interim transfer to customs warehouses or other locations; and

(d) allowing importers who have complied with the procedures that the Party may have relating to the determination of value and payment of duty to withdraw goods from customs, but may require importers to provide security as a condition to the release of goods, when such security is required to ensure that obligations arising from the entry of the goods will be fulfilled.

2. Each Party shall:

(a) ensure that the amount of any security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled, and, where applicable, not in excess of the amount chargeable, based on tariff rates under domestic and international law, including this Agreement, and on valuation in accordance with the Customs Valuation Agreement;

(b) ensure that any security shall be discharged as soon as possible after its customs authorities are satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) shall adopt procedures allowing:

(i) importers to provide security such as bank guarantees, bonds, or other non-cash financial instruments;
(ii) importers that regularly enter goods to provide security such as standing bank guarantees, continuous bonds or other non-cash financial instruments covering multiple entries; and
(iii) importers to provide security in any other forms specified by its customs authorities.

ARTICLE 4.9: RISK ASSESSMENT

Each Party shall employ risk management systems that enable its customs authorities to concentrate inspection activities on high-risk goods and that facilitate the movement of low-risk goods, including systems which allow for the processing of information regarding an importation prior to the arrival of the imported goods.

ARTICLE 4.10: EXPRESS SHIPMENTS

Each Party shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event that a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express shipments. Such procedures shall:

(a) provide for pre-arrival processing of information related to express shipments;

(b) permit, as a condition for release, the submission of a single document in the form that the Party considers appropriate, such as a single manifest or a single declaration, covering all of the goods in the shipment by an express service company, through, if possible, electronic means;

(c) provide, where possible, for deferred payment of duties, taxes, and fees with appropriate guarantees;

(d) minimize, to the extent possible, the documentation required for the release of express shipments; and

(e) allow, in normal circumstances, for an express shipment to be released within six hours of the submission of necessary customs documentation.

ARTICLE 4.11: DEFINITIONS

For purposes of this Chapter, **customs matters** means matters pertaining to the classification and valuation of goods for customs duty purposes, rates of duty, country of origin, and eligibility for preferential treatment under this Agreement, and all other procedural and substantive requirements, restrictions, and prohibitions on imports or exports, including such matters pertaining to goods imported or exported by or on behalf of travelers. Customs matters do not include matters pertaining to antidumping or countervailing duties.

TECHNICAL STANDARDS

CHAPTER 6: TECHNICAL BARRIERS TO TRADE

ARTICLE 6.1: SCOPE
This Chapter applies to technical regulations, standards, and conformity assessment procedures as defined in the WTO TBT Agreement.

ARTICLE 6.2: ENHANCED COOPERATION AND CHAPTER 6 COORDINATOR
1. With a view to facilitating trade in goods between them, the Parties should to the maximum extent possible seek to enhance their cooperation with each other in the area of technical regulations, standards, and conformity assessment procedures and to deepen the mutual understanding and awareness of each other's systems, including through:

(a) exchanging information on technical regulations, standards and conformity assessment procedures;

(b) holding consultations to address and resolve any matters that may arise from the application of specific technical regulations, standards and conformity assessment procedures;

(c) promoting the use of international standards by each Party in its technical regulations, standards and conformity assessment procedures; and

(d) facilitating and promoting mechanisms relating to technical regulations, standards and conformity assessment procedures that would enhance and promote trade between the Parties, including mechanisms established at APEC and other plurilateral fora.

2. In order to facilitate the cooperation described in paragraph 1, each Party shall designate a Chapter 6 Coordinator, which shall:

(a) be responsible for coordinating with interested parties in the Party's territory in all matters pertaining to enhanced cooperation under this Chapter, including with respect to proposals for enhanced cooperation and responses to such proposals; and

(b) normally carry out its functions through agreed communication channels and meet with the other Party's Chapter 6 Coordinator as and when they agree is necessary for the efficient and effective discharge of their functions.

ARTICLE 6.3: CONFORMITY ASSESSMENT AND OTHER AREAS OF MUTUAL INTEREST

1. Each Party shall take steps to implement Phase I and Phase II of the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment with respect to the other Party.

2. The Parties should to the maximum extent possible also work towards enhancing the momentum of cooperation in line with their respective bilateral, regional and plurilateral agreements, including the APEC work program on Standards and Conformance. To achieve this objective the Parties should to the maximum extent possible examine the feasibility of

cooperating with each other on conformity assessment procedures and other areas of mutual interest, including agreements where the relevant authorities from both Parties are willing to do so.

3. Each Party should to the maximum extent possible consider progress made on achieving the objectives of this Chapter during meetings of the Joint Committee established under Article 20.1 (Joint Committee).

4. The Parties establish the Medical Products Working Group referred to in Article 20.1.2(b) (Joint Committee), as set out in Annex 6A to this Chapter.

ARTICLE 6.4: DEFINITIONS
For purposes of this Chapter:

1. **WTO TBT Agreement** means the WTO Agreement on Technical Barriers to Trade; and
2. **APEC** means the Asia Pacific Economic Cooperation Forum.

ANNEX 6A
WORKING GROUP ON MEDICAL PRODUCTS
1. The Parties establish a Medical Products Working Group to promote the protection of public health through expeditious, science-based regulatory procedures for new medical products. The purpose of the Working Group is to provide a forum for cooperation on product regulation issues of mutual interest, to the extent permitted by resources, through means other than mutual recognition agreements or other binding commitments.

2. The Working Group shall:
   (a) seek to ensure that regulatory procedures for the review of applications for marketing authorization with respect to new medical products are
      (i) expeditious, transparent, without conflict of interest, and nondiscriminatory,
      (ii) based on generally-accepted international scientific standards, such as the International Conference on Harmonization, and
      (iii) based only on the assessment of product quality, safety, and efficacy;
   (b) seek to ensure that the measures of each Party that promote and protect public health through regulatory procedures for medical products are transparent and are developed through a process that
      (i) provides for effective notice to and comment by interested persons, and
      (ii) provides a meaningful opportunity for interested persons of the other Party to consult with FDA or HSA, as appropriate; and
   (c) provide a forum for consultation between the health authorities of each Party regarding matters of interest, including general scientific and regulatory policy and specific measures pertaining to the promotion and protection of public health through expeditious, science-based regulatory procedures.

3. FDA and HSA shall chair the Working Group. The chairs shall be responsible for establishing the time and place for meetings of the Working Group and for developing the procedures for such meetings and other activities of the Working Group. Such procedures shall include that:

(a) FDA shall report on the activities of the Working Group to the U.S. Secretary of Health and Human Services;

(b) HSA shall report on the activities of the Working Group to the Singapore Minister

for Health; and

(c) the Working Group shall issue periodic reports to the Joint Committee established under Article 20.1 (Joint Committee).

4. The Parties shall ensure that the activities of the Working Group do not preclude or interfere with other opportunities for meetings and cooperation between FDA and HSA.
5. For purposes of this Annex:

(a) **FDA** means the United States Food and Drug Administration;
(b) **HSA** means the Health Sciences Authority of Singapore; and
(c) **Working Group** means the Medical Products Working Group comprising representatives of FDA and HSA.

TECHNICAL STANDARDS

CHAPTER 1: ESTABLISHMENT OF A FREE TRADE AREA AND DEFINITIONS

ARTICLE 1.1: GENERAL

2. The Parties reaffirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.

CHAPTER 16: INTELLECTUAL PROPERTY RIGHTS

ARTICLE 16.1: GENERAL PROVISIONS

1. Each Party shall, at a minimum, give effect to this Chapter.

2. (a) Each Party shall ratify or accede to the following agreements:

(i) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
(ii) the International Convention for the Protection of New Varieties of Plants (1991) (AUPOV Convention@);
(iii) the WIPO Copyright Treaty (1996);
(iv) the WIPO Performances and Phonograms Treaty (1996); and
(v) the Patent Cooperation Treaty (1984).

(b) Each Party shall give effect to:

(i) Articles 1 through 6 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (AWIPO@); and
(ii) the Trademark Law Treaty.[4]

4 Singapore is not obligated to give effect to Articles 6 and 7 of the Trademark Law Treaty.

(c) Each Party shall make best efforts to ratify or accede to:

(i) the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and
(ii) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

3. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals[5] of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection[6] and enjoyment of such intellectual property rights and any benefits derived from such rights.[7]

4. Each Party may derogate from paragraph 3 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter and where such practices are not applied in a manner that would constitute a disguised restriction on trade.

5. Paragraphs 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

6. Except as otherwise provided in this Chapter:

(a) this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement that is protected on that date in the Party where the protection is claimed and/or that meets or comes subsequently to meet the criteria for protection under the terms of this Chapter;

(b) a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the Party where the protection is claimed.

7. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

ARTICLE 16.2: TRADEMARKS, INCLUDING GEOGRAPHICAL INDICATIONS

1. Each Party shall provide that trademarks shall include service marks, collective marks, and certification marks,[8] and may include geographical indications.[9] Neither Party shall require, as a condition of registration, that signs be visually

---

5 For purposes of Articles 16.1.3 and 16.5.1, a national of a Party shall also mean, in respect of the relevant right, entities located in such Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 16.1.2 and the TRIPS Agreement 1.

6 For the purposes of paragraphs 3 and 4, “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. For the purposes of paragraphs 3 and 4, “protection” shall also include the prohibition on circumvention of effective technological measures pursuant to paragraph 7 of Article 16.4 and the provision concerning rights management information pursuant to paragraph 8 of Article 16.4.

7 “Benefits derived therefrom” refers to benefits such as levies on blank tapes.

perceptible, but each Party shall make best efforts to register scent marks. Each Party shall afford an opportunity for the registration of a trademark to be opposed.

2. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

3. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

4. Article 6*bis* of the Paris Convention for the Protection of Industrial Property (1967) ("Paris Convention") shall apply, *mutatis mutandis*, to goods or services that are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

5. Neither Party shall require recordation of trademark licenses to establish the validity of the license or to assert any rights in a trademark.

6. Pursuant to Article 20 of the TRIPS Agreement, each Party shall ensure that its provisions mandating the use of a term customary in common language as the common name for a product including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of a trademark used in relation to such products.[10]

ARTICLE 16.3: DOMAIN NAMES ON THE INTERNET

1. Each Party shall participate in the Governmental Advisory Committee of the Internet Corporation for Assigned Names and Numbers (ICANN), which serves to consider and provide advice on the activities of the ICANN as they relate to government concerns, including matters related to intellectual property and the domain name system, as well as to promote responsible country code Top Level Domain (ccTLD) administration, management, and operational practices.

2. Each Party shall require that registrants of domain names in its ccTLD are subject to a dispute resolution procedure, modeled along the same lines as the principles set forth in ICANN Uniform Domain Name Dispute Resolution Policy (ICANN UDRP), to address and resolve disputes related to the bad-faith registration of domain names in violation of

---

8 Neither Party is obligated to treat certification marks as a separate category in domestic law, provided that such marks are protected.

9 A geographical indication shall be capable of constituting a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin.

10 This provision is not intended to affect the use of common names of pharmaceutical products in prescribing medicine.

trademarks. Each Party shall also ensure that its corresponding ccTLDs provide public access to a reliable and accurate AWHOIS@ database of domain name registrant contact information.

ARTICLE 16.4: OBLIGATIONS COMMON TO COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide that authors, performers, and producers of phonograms and their successors in interest have the right to authorize or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. (a) Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the Berne Convention for the Protection of Literary and Artistic Works (1971) ("Berne Convention"), each Party shall provide to authors, performers, producers of phonograms and their successors in interest the exclusive right to authorize or prohibit the communication to the public of their works, performances, or phonograms, by wire or wireless means, including the making available to the public of their works, performances, and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them. Notwithstanding paragraph 10, a Party may provide limitations or exceptions to this right in the case of performers and producers of phonograms for analog or digital free over-the-air terrestrial broadcasting and, further, a Party may provide limitations with respect to other non-interactive transmissions, in certain special cases provided that such limitations do not conflict with a normal exploitation of performances or phonograms and do not unreasonably prejudice the interests of such right holders.

(b) Neither Party shall permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder in the subject matter of the signal.

3. Each Party shall provide to authors, performers, producers of phonograms, and their successors in interest the exclusive right of authorizing the making available to the public of the original and copies of their works and phonograms through sale or other transfer of ownership.

4. Each Party shall provide that where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author=s death; and

(b) on a basis other than the life of a natural person, the term shall be not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram or, failing such authorized publication within 50 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the subject matter, rights and obligations in Articles 16.4 and 16.5.

6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right:

(a) may freely and separately transfer such right by contract; and

(b) by virtue of a contract, including contracts of employment underlying the creation of works and phonograms, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, producers of phonograms, and their successors in interest use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

> (i) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or
>
> (ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components or offers to the public or provides services, which:
>
> > (A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure, or
> >
> > (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure, or
> >
> > (C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure;

shall be liable and subject to the remedies provided for in Article 16.9.5. Each Party shall provide that any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, that is found to have engaged willfully and for purposes of commercial advantage or private fnancial gain in such activities shall be guilty of a criminal offense.

(b) For purposes of this paragraph, **effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other subject matter, or protects any copyright or any rights related to copyright.

(c) Paragraph 7(a) obligates each Party to prohibit circumvention of effective technological measures and does not obligate a Party to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure. The absence of a requirement to respond affirmatively shall not constitute a defense to a claim of violation of that Party's measures implementing paragraph 7(a).

(d) Each Party shall provide that a violation of the law implementing this paragraph is independent of any infringement that might occur under the Party's law on copyright and related rights.

(e) Each Party shall confine exceptions to the prohibition referred to in paragraph 7(a)(ii) on technology, products, services, or devices that circumvent effective technological measures that control access to, and, in the case of clause (i) below, that protect any of the exclusive rights of copyright or related rights in a protected work, to the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies that the Party provides against the circumvention of effective technological measures:

> (i) noninfringing reverse engineering activities with regard to a lawfully

obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in such activity, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, performance, or display of a work, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device provided that such technology, product, service or device itself is not prohibited under the measures implementing paragraph 7(a)(ii); and

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network.

(f) Each Party shall confine exceptions to the prohibited conduct referred to in paragraph 7(a)(i) to the activities listed in paragraph 7(e) and the following activities, provided that such exceptions do not impair the adequacy of legal protection or the effectiveness of legal remedies the Party provides against the circumvention of effective technological measures:

(i) access by a nonprofit library, archive, or educational institution to a work not otherwise available to it, for the sole purpose of making acquisition decisions;

(ii) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work; and

(iii) noninfringing uses of a particular class of works when an actual or likely adverse impact on such noninfringing uses with respect to such particular class of works is credibly demonstrated in a legislative or administrative proceeding, provided that any exception adopted in reliance on this clause shall have effect for a period of not more than four years from the date of conclusion of such proceeding.

(g) Each Party may also provide exceptions to the prohibited conduct referred to in paragraph 7(a) for lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, national defense, essential security, or similar government activities.

8. In order to provide adequate and effective legal remedies to protect rights management information:

> (a) each Party shall provide that any person who without authority, and knowingly, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related right,
>
> (i) knowingly removes or alters any rights management information;
>
> (ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or
>
> (iii) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies in Article 16.9.5. Each Party shall provide that any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, who is found to have engaged willfully and for purposes of commercial advantage or private financial gain in such activities shall be guilty of a criminal offense.

(b) For purposes of this paragraph, **rights management information** means information which identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram; information about the terms and conditions of the use of the work, performance, or phonogram; and any numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance, or phonogram or appears in conjunction with the communication or making available of a work, performance, or phonogram to the public. Nothing in this paragraph obligates a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of it or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. Each Party shall issue appropriate laws, orders, regulations, administrative, or executive decrees mandating that all government agencies use computer software only as authorized by the right holder. Such measures shall actively regulate the acquisition and management of software for such government use, which may take the form of procedures, such as preparing and maintaining inventories of software present on agency computers, and inventories of existing software licenses.

10. Each Party shall confine limitations or exceptions to exclusive rights in Articles 16.4 and 16.5 to certain special cases which do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

ARTICLE 16.5: OBLIGATIONS PERTAINING TO RELATED RIGHTS

1. Each Party shall accord the rights provided for in this Chapter to performers and producers of phonograms who are nationals of the other Party and to performances or phonograms first published or fixed in the territory of the other Party. A

performance or phonogram shall be considered first published in any Party in which it is published within 30 days of its original publication.[11]

2. Each Party shall provide to performers the exclusive right to authorize or prohibit:

(a) the communication to the public of their unfixed performances, except where the performance is already a broadcast performance, and

(b) the fixation of their unfixed performances.

3. With respect to all rights of performers and producers of phonograms, the enjoyment and exercise of the rights provided for in this Chapter shall not be subject to any formality.

4. For the purposes of this Chapter, the following definitions apply with respect to performers and producers of phonograms:

(a) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;
(b) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;[12]
(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;
(d) **producer of a phonogram** means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;
(e) **publication** of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable
quantity; and

(f) **broadcasting** means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent.

ARTICLE 16.6: PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS

1. Each Party shall make it:

(a) a criminal offense to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of

11 For the application of paragraph 1 of Article 16.5, fixed means the finalization of the master tape or its equivalent.

12 The definition of phonogram provided herein does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal;
(b) a criminal offense willfully to receive or further distribute an encrypted program carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal; and
(c) a civil offense to engage in any activity prohibited under subparagraph (a) or (b).

2. Each Party shall provide that any civil offense established under subparagraph (c) shall be actionable by any person that holds an interest in the encrypted program-carrying satellite signal or the content thereof.

ARTICLE 16.7: PATENTS

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful", respectively. Each Party may exclude inventions from patentability only as defined in Articles 27.2 and 27.3(a) of the TRIPS Agreement.

2. Each Party shall provide that patent owners shall also have the right to assign, or transfer by succession, a patent and to conclude licensing contracts. Each Party shall provide a cause of action to prevent or redress the procurement of a patented pharmaceutical product, without the authorization of the patent owner, by a party who knows or has reason to know that such product is or has been distributed in breach of a contract between the right holder and a licensee, regardless of whether such breach occurs in or outside its territory.[13] Each Party shall provide that in such a cause of action, notice shall constitute constructive knowledge.
3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.
4. Each Party shall provide that a patent may only be revoked on grounds that would have justified a refusal to grant the patent, or that pertain to the insufficiency of or unauthorized amendments to the patent specification, non-disclosure or misrepresentation of prescribed, material particulars, fraud, and misrepresentation. Where such proceedings include opposition proceedings, a Party may not make such proceedings available prior to the grant of the patent.

5. If a Party permits the use by a third party of the subject matter of a subsisting patent to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of that Party other than for purposes related to meeting requirements for marketing approval, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

6. Neither Party shall permit the use[14] of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

---

13 A Party may limit such cause of action to cases where the product has been sold or distributed only outside the Party's territory before its procurement inside the Party's territory.

14 "AUse" in this provision refers to use other than that allowed in paragraph 3.

(a) to remedy a practice determined after judicial or administrative process to be anticompetitive under the competition laws of the Party;[15]
(b) in the case of public non-commercial use or in the case of a national emergency or other circumstances of extreme urgency, provided that:

(i) such use is limited to use by the government or third parties authorized by the government;
(ii) the patent owner is provided with reasonable and entire compensation for such use and manufacture; and
(iii) the Party shall not require the patent owner to transfer undisclosed information or technical "know how" related to a patented invention that has been authorized for use without the consent of the patent owner pursuant to this paragraph.

Where a Party's law allows for such use pursuant to subparagraphs (a) and (b), the Party shall respect the provisions of Article 31 of the TRIPS Agreement.

7. Each Party, at the request of the patent owner, shall extend the term of a patent to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application with the Party, or two years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.[16]

8. Where a Party provides for the grant of a patent on the basis of an examination of the invention conducted in another country, that Party, at the request of the patent owner, may extend the term of a patent for up to five years to compensate for the unreasonable delay that may occur in the issuance of the patent granted by such other country where that country has extended the term of the patent based on such delay.

ARTICLE 16.8: CERTAIN REGULATED PRODUCTS

1. If a Party requires the submission of information concerning the safety and efficacy of a pharmaceutical or agricultural chemical product prior to permitting the marketing of such product, the Party shall not permit third parties not having the consent of the party providing the information to market the same or a similar product on the basis of the approval granted to the party submitting such information for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product.[17]

2. If a Party provides a means of granting approval to market a product specified in paragraph 1 on the basis of the grant of an approval for marketing of the same or similar product in another country, the Party shall defer the date of any such approval to third parties not having the consent of the party providing the information in the other country for at least five

---

15 The Parties recognize that an intellectual property right does not necessarily confer market power upon its owner.

16 Periods attributable to actions of the patent applicant shall include such periods of time taken to file prescribed documents relating to the examination as provided in the laws of the Party.

17 Where a Party, on the date of its implementation of the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use that conferred a different form or period of protection shorter than that specified in paragraph 1 of Article 16.8, that Party may retain such system notwithstanding the obligations of that paragraph.

years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product in the territory of the Party or in the other country, whichever is later.

3. Where a product is subject to a system of marketing approval pursuant to paragraph 1 or 2 and is also subject to a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraph 1 or 2 in the event that the patent protection terminates on a date earlier than the end of the term of such protection.

4. With respect to any pharmaceutical product that is subject to a patent:

(a) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process;

(b) the Party shall provide that the patent owner shall be notified of the identity of any third party requesting marketing approval effective during the term of the patent; and

(c) the Party shall not grant marketing approval to any third party prior to the expiration of the patent term, unless by consent or with the acquiescence of the patent owner.

ARTICLE 16.9: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

General Obligations

1. Each Party shall ensure that in judicial and administrative proceedings for the enforcement of intellectual property rights, decisions on the merits of a case, that under the law or practice of the Party are of general application, shall preferably be in writing and shall state the reasons on which the decisions are based.

2. Each Party shall ensure that its laws and regulations, procedures, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights shall be published, or where such publication is not practicable, made publicly available, in a national language, in such a manner as to enable the other Party and right holders to become acquainted with them. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

3. Each Party shall inform the public of its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal system, including any statistical information that the Party may collect for such purposes.

4. The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with this Chapter.

5. Each Party shall provide for civil remedies against the actions described in paragraphs 7 and 8 of Article 16.4. These shall include at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) the opportunity for the right holder to elect between actual damages it suffered (plus any profits attributable to the prohibited activity not taken into account in computing the actual damages) or pre-established damages;

(c) payment to a prevailing right holder of court costs and fees and reasonable

attorney's fees by the party engaged in the prohibited conduct at the conclusion of the civil judicial proceeding; and

(d) destruction of devices and products found to be involved in the prohibited conduct.

6. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner, is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

Civil and Administrative Procedures and Remedies for the Enforcement of Intellectual Property Rights

7. Each Party shall make available to right holders[18] civil judicial procedures concerning the enforcement of any intellectual property right.

8. Each Party shall provide that in civil judicial proceedings, its judicial authorities shall have the authority, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark infringement, to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer engaged in infringing activity, as well as the profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In addition, in determining injury to the right holder, the judicial authorities shall, *inter alia*, consider the value of the infringed-upon good or service, according to the suggested retail price of the legitimate good or service.

9. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain pre-established damages that shall be available on the election of the right holder. Each Party shall provide that pre-established damages shall be in an amount sufficiently high to constitute a deterrent to future infringements and with the intent to compensate the right holder for the harm caused by the infringement.

10. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of the civil judicial proceedings concerning copyright or related rights and trademark counterfeiting, that a prevailing right holder shall be paid court costs or fees and reasonable attorney=s fees by the infringing party.

11. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods and any related materials and implements used to accomplish the prohibited activity.

---

18 For the purpose of Article 16.9 concerning the enforcement of intellectual property rights, the term a right holder@ shall include exclusive licensees as well as federations and associations having the legal standing to assert such rights; and the term "exclusive licensee" shall include the exclusive licensee of any one or more of the exclusive rights encompassed in a given intellectual property.

12. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional cases;

(b) its judicial authorities have the authority to order that materials and implements which have been used in the creation of the infringing goods be, without compensation of any sort, promptly destroyed or, in exceptional cases, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

13. Each Party shall provide that in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to identify third parties that are involved in the production and distribution of the infringing goods or services and their channels of distribution and to provide this information to the right holder. Each Party shall provide that its judicial authorities shall have the authority to fine or imprison, in appropriate cases, persons who fail to abide by valid orders issued by such authorities.

Provisional Measures Concerning the Enforcement of Intellectual Property Rights

14. Each Party shall provide that requests for relief *inaudita altera parte* shall be dealt with expeditiously in accordance with the Party's judicial rules.

15. Each Party shall provide that:

(a) its judicial authorities have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

(b) in the event that its judicial or other authorities appoint experts, technical or otherwise, that must be paid by the plaintiff, such costs should be closely related, *inter alia*, to the quantity of work to be performed and should not unreasonably deter recourse to such relief.

Special Requirements Related to Border Measures Concerning the Enforcement of Intellectual Property Rights

16. Each Party shall provide that any right holder initiating procedures for suspension by the Party's customs authorities of the release of suspected counterfeit trademark or pirated copyright goods[19] into free circulation shall be required to

19 For the purposes of this Chapter:
(a) **counterfeit trademark goods** shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

provide adequate evidence to satisfy the competent authorities that, under the law of the importing country, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder=s knowledge to make the suspected goods reasonably recognizable to the customs authorities.

17. Each Party shall provide that its competent authorities shall have the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or assurance shall not unreasonably deter recourse to these procedures.

18. Where its competent authorities have made a determination that goods are counterfeit or pirated, the Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

19. Each Party shall provide that its competent authorities may initiate border measures *ex officio*, without the need for a formal complaint from a private party or right holder. Such measures shall apply to shipments of pirated and counterfeit goods imported into or exported out of a Party's territory, including shipments consigned to a local party. For transshipped goods that are not consigned to a local party, each Party shall, upon request, endeavor to examine such goods. For products transshipped through the territory of a Party destined for the territory of the other Party, the former shall cooperate to provide all available information to the latter Party to enable effective enforcement against shipments of counterfeit or pirated goods. Each Party shall ensure that it has the authority to undertake such cooperation in response to a request by the other Party on counterfeit or pirated goods en route to that other Party.

20. Each Party shall provide that goods that its competent authorities have determined to be pirated or counterfeit shall be destroyed, except in exceptional cases. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the export of counterfeit or pirated goods.

Criminal Procedures and Remedies for the Enforcement of Intellectual Property Rights

21. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes (i) significant willful infringements of copyright or related rights that have no direct or indirect motivation of financial gain, as well as (ii) willful infringements for purposes of commercial advantage or financial gain.

(a) Specifically, each Party shall provide:

> (i) remedies that include imprisonment as well as monetary fines sufficiently high to deter future acts of infringement consistent with a policy of removing the monetary incentive of the infringer. Also, each Party shall encourage its judicial authorities to impose such fines at levels sufficient to provide a deterrent to future infringements;

(b) **pirated copyright goods** shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

(ii) that its judicial authorities have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity, and documentary evidence relevant to the offense that fall within the scope of such order. Items that are subject to seizure pursuant to such order need not be individually identified so long as they fall within general categories specified in the order;

(iii) that its judicial authorities shall, except in exceptional cases, order the forfeiture and destruction of all counterfeit or pirated goods, and, at least with respect to willful copyright or related rights piracy, materials and implements that have been used in the creation of the infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation of any kind to the defendant; and

(iv) that its authorities may initiate legal action *ex officio*, without the need for a formal complaint by a private party or right holder.

(b) Each Party may provide procedures for right holders to initiate private criminal actions. However, these procedures shall not be unduly burdensome or costly for right holders. Each Party shall ensure that non-private criminal actions are the primary means by which it ensures the effective enforcement of its criminal law against willful copyright or related rights piracy. In addition, each Party shall ensure that its competent authorities bring criminal actions, as necessary, to act as a deterrent to further infringements.

Limitations on Liability for Service Providers

22. Each Party shall provide, consistent with the framework set forth in Article 16.9:

(a) legal incentives for service providers to cooperate with copyright[20] owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph.[21]

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:[22]

---

20 For purposes of Article 16.9.22, “copyright” shall also include related rights.

21 It is understood that this subparagraph is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

(A) transmitting, routing or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (i)(D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in subparagraphs (iv) – (vii).

(iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the territory of each Party used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (i)(D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

---

22 Either Party may request consultations with the other Party to consider how to address future functions of a similar nature under this paragraph.

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with subparagraph (ix) and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the territory of each Party that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the functions referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy, and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes

reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) For purposes of the functions referred to in clause (i)(A), **service provider** means a provider of transmission, routing or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for purposes of the functions referred to in clauses (i)(B) through (i)(D) service provider means a provider or operator of facilities for online services or network access.

ARTICLE 16.10: TRANSITIONAL PROVISIONS

1. Each Party shall implement the obligations of this Chapter within the following periods:

(a) Each Party shall ratify or accede to the UPOV Convention and give effect to the obligations in paragraph 4 of Article 16.4 within six months of the date of entry into force of this Agreement or December 31, 2004, whichever date is earlier;

(b) each Party shall ratify or accede to the agreements listed in paragraph 2(a) of Article 16.1(except for the UPOV Convention) and give effect to Articles 16.4 and 16.5 (except for paragraph 4 of Article 16.4) within one year of the date of entry into force of this Agreement; and

(c) each Party shall implement each of the other obligations of this Chapter within six months of the date of entry into force of this Agreement.

2. Except as otherwise provided in this Chapter, the date of entry into force in paragraph 6(b) of Article 16.1 means the date of the expiry of the six-month period commencing on the date this Agreement enters into force.

CHAPTER 2: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.2: ELIMINATION OF DUTIES

1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with Annexes 2B (U.S. Schedule) and 2C (Singapore Schedule).

2. A Party shall not increase an existing customs duty or introduce a new customs duty on imports of an originating good, other than as permitted by this Agreement, subject to Annex 2A.

3. Upon request by any Party, the Parties shall consult to consider accelerating the elimination of customs duties as set out in their respective schedules. An agreement by the Parties to accelerate the elimination of customs duties on an originating good shall be treated as an amendment to Annexes 2B and 2C, and shall enter into force after the Parties have exchanged written notification certifying that they have completed necessary internal legal procedures and on such date or dates as may be agreed between them.

ANNEX 2B SCHEDULE OF THE UNITED STATES
GENERAL NOTES

GENERAL NOTES
TARIFF SCHEDULE OF THE UNITED STATES

1. Relation to the Harmonized Tariff Schedule of the United States (HTSUS). The provisions of this schedule are generally expressed in terms of the Harmonized Tariff Schedule of the United States, and the interpretation of the provisions of this schedule, including the goods coverage of subheadings of this schedule, shall be governed by the General Notes, Section Notes, and Chapter Notes of the HTSUS. To the extent that provisions of this schedule are identical to the corresponding provisions of the HTSUS, the provisions of this schedule shall have the same meaning as the corresponding provisions of the HTSUS.

2. Base Rates of Customs Duty. The base rates of duty set forth in this schedule reflect the HTSUS Column 1 General rates of duty in effect January 1, 2002.

3. Rounding. For the purpose of the elimination of customs duties in accordance with this note, interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

4. Staging. The following staging categories apply to the elimination of customs duties by the United States pursuant to Article 2.2:

(a) duties on goods provided for in the items in staging category A shall be eliminated entirely and such goods will be duty free on the date this Agreement enters into force;

(b) duties on goods provided for in the items in staging category B shall be removed in four equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty free, effective January 1 of year four;

(c) duties on goods provided for in the items in staging category C shall be removed in eight equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty free, effective January 1 of year eight;

(d) duties on goods provided for in the items in staging category D shall be removed in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty free, effective January 1 of year ten;

(e) goods provided for in staging category E shall continue to receive duty free 2B-Notes-2 treatment;

(f) duties on goods provided for in the items in staging category G shall be eliminated entirely and such goods may enter free of duty and without bond on the date this Agreement enters into force;

(g) duties on goods provided for in items in staging category H shall be subject to the following provisions during the tariff elimination period until January 1, of year ten of the Agreement, at which time such goods shall be free of duty:

(i) For goods described in tariff category 9802.00.60, at the time of entry the duty imposed upon the value of the processing outside the United States to be applied in accordance with the procedures specified in U.S. note 3 of subchapter II, chapter 98, of the HTS, shall be the rate which would apply to the article itself under the staging obligations set forth for the appropriate provision in Chapters 1 to 97 of this schedule.

(ii) For goods described in tariff category 9802.00.80, at the time of entry the duty imposed upon the assembled article to be applied in accordance with the procedures specified in U.S. note 4 of subchapter II, chapter 98, of the HTS, shall be the rate applicable to the full value of the article itself under the staging obligations set forth for the appropriate provision in Chapters 1 to 97 of this schedule.

(iii) For goods described in tariff category 9817.61.01, at the time of entry the duty imposed upon the assembled article shall be the rate applicable to the full value of the article itself under the staging obligations set forth for the appropriate provision in Chapters 1 to 97 of this schedule.

(iv) For goods described in tariff category 9818.00.05, at the time of entry the duty imposed upon the cost of such parts shall be the rate applicable to the full value of such parts under the staging obligations set forth for the appropriate provision in Chapters 1 to 97 of this schedule.

ANNEX 2C SCHEDULE OF SINGAPORE
GENERAL NOTES

TARIFF SCHEDULE OF SINGAPORE

1. Relation to the Singapore Trade Classification, Customs and Excise Duties (STCCE). The provisions of this schedule are generally expressed in terms of the Singapore Trade Classification, Customs and Excise Duties, and the interpretation of the provisions of this schedule, including the product coverage of subheadings of this schedule, shall be governed by the General Notes, Section Notes, Chapter Notes and subheading notes of the STCCE. To the extent that provisions of this schedule are identical to the corresponding provisions of the STCCE, the provisions of this schedule shall have the same meaning as the corresponding provisions of the STCCE.

2. Base Rates of Customs Duty. The base rates of duty set forth in this schedule reflect the STCCE Column 5 Full Customs Duty in effect January 1, 2003.

3. Staging. The following staging categories apply to the elimination of customs duties by Singapore pursuant to Article 2.2:

(a) duties on goods provided for in the items in staging category A shall be eliminated entirely and such goods will be duty free on the date this Agreement enters into force;
(b) goods provided for in staging category E shall continue to receive duty free treatment.

CHAPTER 9: TELECOMMUNICATIONS

ARTICLE 9.1: SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in telecommunications services.

2. This Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.[23]

3. Nothing in this Chapter shall be construed to:

(a) require a Party (or require a Party to compel any enterprise) to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or telecommunications services where such networks or services are not offered to the public generally; or

(b) require a Party to compel any enterprise engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network, unless a Party specifically designates such facilities as such.

ARTICLE 9.2: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES[24]

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport network and service, including leased circuits, offered in its territory or across its borders on reasonable, non-discriminatory (including with respect to timeliness), and transparent terms and conditions, including as set out in paragraphs 2 through 4.

2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network;

(b) provide services to individual or multiple end-users over any leased or owned circuit(s);

(c) connect leased or owned circuits with public telecommunications transport networks and services in the territory, or across the borders, of that Party, or with circuits leased or owned by another enterprise;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public

---

23 For greater certainty, Singapore's obligations under this Chapter shall not apply to measures adopted or maintained relating to broadcasting services as defined in Singapore's Schedule to Annex 8B.

24 This Article does not apply to access to unbundled network elements, including access to leased circuits as an unbundled network element, which is addressed in Article 9.4.3.

telecommunications transport networks and services for the movement of information in its territory or across its borders and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to
(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of customer proprietary network information;
subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 9.3: INTERCONNECTION WITH SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES
1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the facilities and equipment of suppliers of public telecommunications services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of proprietary information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing public telecommunications services.

ARTICLE 9.4: CONDUCT OF MAJOR SUPPLIERS2526
Treatment by Major Suppliers

1. Each Party shall ensure that any major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated service supplier regarding:
(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

A Party shall assess such treatment on the basis of whether such suppliers of public telecommunications services, subsidiaries, affiliates, and non-affiliated service suppliers are in like circumstances.

Competitive Safeguards
2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

---

25 For the purpose of the United States' obligations, Article 9.4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, unless a state regulatory authority orders otherwise. Moreover, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, from the obligations contained in Article 9.4.

26 Article 9.4 does not apply to suppliers of commercial mobile services.

(b) For purposes of subparagraph (a), anti-competitive practices include:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anti-competitive results; and

(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that is necessary for them to provide public telecommunications services.

Unbundling of Network Elements

3. (a) Recognizing that both Parties currently provide for access to unbundled network elements, each Party shall provide its telecommunications regulatory body the authority to require that major suppliers in its territory provide suppliers of public telecommunications services of the other Party access to network elements on an unbundled basis at terms, conditions, and cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent for the supply of public telecommunications services.

(b) Which network elements will be required to be made available in the territory of a Party, and which suppliers may obtain such elements, shall be determined in accordance with national law and regulation.

(c) In determining the network elements to be made available, a Party's telecommunications regulatory body shall consider, at a minimum, in accordance with national law and regulation:

(i) whether access to such network elements as are proprietary in nature are necessary; and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other Party to provide the services it seeks to offer; or

(ii) whether the network elements can be replicated or obtained from other sources at reasonable rates, such that the unavailability of these network elements from the major supplier will not impair the ability of other suppliers of public telecommunicate ions services to provide a competing service; or

(iii) whether the network elements are technically or operationally required for the provision of a competing service; or (iv) other factors as established in national law; as that body construes these factors.

Co-Location

4. (a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location, at premises owned or controlled by the major supplier, of equipment necessary for interconnection or access to unbundled network elements on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide or facilitate virtual co-location on terms and conditions, and at costoriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

(c) Each Party may determine, in accordance with national law and regulation, which premises in its territory shall be subject to subparagraphs (a) and (b)

Resale

5. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable[27] rates, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end-users; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such public telecommunications services.[28]

Poles, Ducts, and Conduits

6. (a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, and conduits, owned or controlled by such major suppliers to suppliers of public telecommunications services of the other Party, under terms, conditions, and cost-oriented[29] rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

(b) Nothing shall prevent a Party from determining, under its domestic law and regulation, which particular structures owned or controlled by the major suppliers in its territory, are required to be made available in accordance with paragraph (a) provided that this is based on a determination that such structures cannot feasibly be economically or technically substituted in order to provide a competing service.

Number Portability

7. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

Interconnection

8. (a) General Terms and Conditions

Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(i) at any technically feasible point in the major supplier's network;

---

27 In the United States, a wholesale rate set pursuant to domestic law and regulation shall be considered to be reasonable for purposes of subparagraph (a). In Singapore, wholesale rates are not required by the telecommunications regulatory body and therefore are not factored into a determination of what is considered to be reasonable for the purposes of subparagraph (a).

28 In the United States, a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers may be prohibited from offering such service to a different category of subscribers. In Singapore, where national law and regulation provides for this, resellers that obtain public telecommunications services available at retail only to a category of subscribers at particular rates may be prohibited from offering such service to a different category of subscribers at that particular rate.

29 In the United States, this obligation may not apply to those states that regulate such rates as a matter of state law.

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favorable than that provided by such major supplier for its own like services or for like services of non-affiliated suppliers of public telecommunications services or for its subsidiaries or other affiliates;

(iv) in a timely fashion, on terms, conditions, (including technical standards and specifications), and cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(v) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications services, subject to charges that reflect the cost of construction of necessary additional facilities.[30]

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

(i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(ii) the terms and conditions of an existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require each major supplier in its territory to make publicly available either a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection Negotiations Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body.

(ii) Each Party shall make available for inspection to suppliers of public telecommunications services which are seeking interconnection, interconnection agreements in force between a major supplier in its territory and any other supplier of public telecommunications services in such territory, including interconnection agreements concluded between a major supplier and its affiliates and subsidiaries.

(f) Resolution of Interconnection Disputes

30 These costs may include the cost of physical or virtual co-location referenced in Article 9.4.4.

Each Party shall ensure that suppliers of public telecommunications services of the other Party, that have requested interconnection with a major supplier in the Party's territory have recourse to a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection within a reasonable and publicly available period of time.

Provisioning and Pricing of Leased Circuits Services[31]

9. (a) Each Party shall ensure that major suppliers of leased circuits services in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services, on terms and conditions under pricing structures, and at rates that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

(b) Each Party may determine whether rates for leased circuits services in its territory are reasonable by taking into account the rates of like leased circuits services in comparable markets in other countries.

ARTICLE 9.5: SUBMARINE CABLE LANDING STATIONS

1. Where under national law and regulation, a Party has authorized a supplier of public telecommunications services in its territory to operate a submarine cable system (including the landing facilities and services) as a public telecommunications service, that Party shall ensure that such supplier provides that public telecommunications service[32] to suppliers of public telecommunications services of the other Party on reasonable terms, conditions, and rates that are no less favorable than such supplier offers to any other supplier of public telecommunications services in like circumstances.

2. Where submarine cable landing facilities and services cannot be economically or technically substituted, and a major supplier of public international telecommunication services that controls such cable landing facilities and services has the ability to materially affect the price and supply for those facilities and services for the provision of public telecommunications services in a Party's territory, the Party shall ensure that such major supplier:

(a) permits suppliers of public telecommunications services of the other Party to:

> (i) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and
>
> (ii) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links at the submarine cable landing station at terms, conditions, and cost-oriented rates, that are reasonable and non-discriminatory; and

(b) provides suppliers of telecommunications of the other Party submarine cable capacity, backhaul links, and cross-connect links in the submarine cable landing station at terms, conditions, and rates that are reasonable and non-discriminatory.

ARTICLE 9.6: INDEPENDENT REGULATION AND PRIVATIZATION

---

31 The obligation under this article is not an obligation to provide leased circuits as an unbundled network element, which is addressed in Article 9.4.3.

32 This shall include any submarine cable landing facilities included as part of that authorization.

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold any financial interest or maintain an operating role in such a supplier.

2. Each Party shall ensure that the decisions of, and procedures used by its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions of and procedures of its telecommunications regulatory body.

3. Where a Party has an ownership interest in a supplier of public telecommunications services, it shall notify the other Party of any intention to eliminate such interest as soon as feasible.

ARTICLE 9.7: UNIVERSAL SERVICE

Each Party shall administer any universal service obligation that it maintains in a transparent, nondiscriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

ARTICLE 9.8: LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:

(a) all the licensing criteria and procedures it applies;

(b) the period of time normally required to reach a decision concerning an application for a license; and

(c) the terms and conditions of all licenses it has issued.

2. Each Party shall ensure that an applicant receives, upon request, the reasons for the denial of a license.

ARTICLE 9.9 : ALLOCATION AND USE OF SCARCE RESOURCES[33]

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent, and nondiscriminatory fashion.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies assigned or allocated by each government for specific government uses.

ARTICLE 9.10: ENFORCEMENT

Each Party shall ensure that its telecommunications regulatory body maintains appropriate procedures and authority to enforce domestic measures relating to the obligations under Articles 9.2 through 9.5. Such procedures and authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or modification, suspension, and revocation of licenses.

---

33 The Parties understand that decisions on allocating and assigning spectrum, and frequency management are not measures that are *per se* inconsistent with Article 8.5 (Market Access) and Article 15.8 (Performance Requirements). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

ARTICLE 9.11: RESOLUTION OF DOMESTIC TELECOMMUNICATIONS DISPUTES
Further to Articles 19.5 (Administrative Proceedings) and 19.6 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies
1. Each Party shall ensure that enterprises of the other Party have recourse (within a reasonable period of time) to a telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 9.2 through 9.5.

Reconsideration
2. Each Party shall ensure that any enterprise aggrieved or whose interests are adversely affected by a determination or decision of the telecommunications regulatory body may petition that body for reconsideration of that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

Judicial Review
3. Each Party shall ensure that any enterprise aggrieved by a determination or decision of the telecommunications regulatory body may obtain judicial review of such determination or decision by an impartial and independent judicial authority.

ARTICLE 9.12: TRANSPARENCY
Further to Chapter 19 (Transparency), each Party shall ensure that:

1. rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

2. interested persons are provided with adequate advance public notice of and the opportunity to comment on any rulemaking proposed by the telecommunications regulatory body;

3. its measures relating to public telecommunications services are made publicly available, including:

(a) tariffs and other terms and conditions of service;
(b) specifications of technical interfaces;
(c) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network; and
(d) notification, permit, registration, or licensing requirements, if any; and

4. information on bodies responsible for preparing, amending, and adopting standards related measures is made publicly available.

ARTICLE 9.13: FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES
A Party shall endeavor not to prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile services, subject to the ability of each Party to take measures to ensure that end-users of different networks are able to communicate with each other.

ARTICLE 9.14: FORBEARANCE AND MINIMAL REGULATORY ENVIRONMENT

The Parties recognize the importance of relying on market forces to achieve wide choice and efficient supply of telecommunications services. To this end, each Party may forbear from applying regulation to a telecommunications service that such Party classifies, under its laws and regulations, as a public telecommunications service upon a determination by its telecommunications regulatory body that:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

ARTICLE 9.15: RELATIONSHIP TO OTHER CHAPTERS

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of such inconsistency.

ARTICLE 9.16: DEFINITIONS

For purposes of this Chapter:

1. **backhaul links** means end-to-end transmission links from a submarine cable landing station to another primary point of access to the Party's public telecommunications transport network;

2. **physical co-location** means physical access to and control over space in order to install,maintain, or repair equipment used to provide public telecommunications services;

3. **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

4. **commercial mobile services** means public telecommunications services supplied through mobile wireless means;

5. **cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching and routing equipment of different suppliers of public telecommunications services co-located in that submarine cable landing station;

6. **customer proprietary network information** means information made available to the supplier of public telecommunications services by the end-user solely by virtue of the end-user telecommunications service supplier relationship. This includes information regarding the end user's calling patterns (including the quantity, technical configuration, type, destination, location, and amount of use of the service) and other information that appears on or may pertain to an end user's telephone bill;

7. **end-user** means a final consumer of or subscriber to a public telecommunications service, including a service supplier but excluding a supplier of public telecommunications services;

8. **enterprise** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or government owned or controlled. Forms that an enterprise may take include a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or similar organization;

9. **essential facilities** means facilities of a public telecommunications transport network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service;

10. **interconnection** means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

11. **leased circuits** means telecommunications facilities between two or more designated points which are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

12. **major supplier** means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

13. **network element** means a facility or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facility or equipment;

14. **non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

15. **number portability** means the ability of end-users of public telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;

16. **person** means either a natural person or an enterprise;

17. **public telecommunications transport network** means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points;

18. **public telecommunications service** means any telecommunications service (which a Party may define to include certain facilities used to deliver these telecommunications services) that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;[34]

---

34 Because the United States does not classify services described in 47 U.S.C. § 153(20) as public telecommunications services, these services are not considered public telecommunications services for the purposes of this Agreement. This does not prejudice either Party's positions in the WTO on the scope and definition of these services

19. **reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier concerned;

20. **service supplier** means any person that supplies a service;

21. **submarine cable landing station** means the premises and buildings where international submarine cables arrive and terminate and are connected to backhaul links;

22. **supplier of public telecommunications services** means any provider of public telecommunications services, including those who provide such services to other suppliers of public telecommunications services;[35]

23. **telecommunications** means the transmission and reception of signals by any electromagnetic means;[36]

24. **telecommunications regulatory body** means a national body responsible for the regulation of telecommunications; and

25. **user** means an end-user or a supplier of public telecommunications services.

CHAPTER 10: FINANCIAL SERVICES

ARTICLE 10.1: SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapters 8 (Cross-Border Trade in Services) and 15 (Investment) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 8.11 (Denial of Benefits), 15.6 (Expropriation),[37] 15.7 (Transfers),

35 (a) For Purposes of Singapore's obligations in Articles 9.3,9.4,.1,9.4.5,9.4.8, and 9.13, the phrase supplies of public telecommunications services means a facilities-based licensee or services-based licensee that uses switching or routing equipment, in accordance with the Singapore code of Practice for Competition in the Provision of Telecommunications Services, 2000. (b) For purposes of Singapore's obligations in Articles 9.4.3, 9.4.4, 9.4.6 and 9.5, the phrase **supplier of public telecommunications services** means a facilities-based licensee in accordance with the Singapore Code of Practice for Competition in the Provision of Telecommunications Services, 2000.

36 Including by photonic means.

15.10 (Investment and Environment), 15.11 (Denial of Benefits), and 15.13 (Special Formalities and Information Requirements) are hereby incorporated into and made a part of this Chapter.

(b) Section C of Chapter 15 (Investor-State Dispute Settlement) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 15.6 (Expropriation), 15.7 (Transfers), 15.11 (Denial of Benefits), and 15.13 (Special Formalities and Information Requirements), as incorporated into this Chapter.

(c) Article 8.10 (Transfers and Payments), is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 10.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter does not apply to laws, regulations or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

ARTICLE 10.2: NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 10.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

ARTICLE 10.3: MOST-FAVORED-NATION TREATMENT

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service

---

37 For greater certainty, the letters referred to in Article 15.26 (Status of Letter Exchanges), to the extent relevant, are applicable to Article 15.6 (Expropriation) as incorporated into this Chapter.

suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of the other Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;
(b) achieved through harmonization or other means; or
(c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

ARTICLE 10.4: MARKET ACCESS FOR FINANCIAL INSTITUTIONS

A Party shall not adopt or maintain, with respect to financial institutions of the other Party,[38] either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on
(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or
(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

ARTICLE 10.5: CROSS-BORDER TRADE IN FINANCIAL SERVICES

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services it has specified in Annex 10A.

38 For purposes of this Article, the term “financial institutions of the other Party” includes financial institutions that are located within the territory of the other Party and controlled by persons of the other Party that seek to establish financial institutions within the territory of the Party.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this obligation, as long as such definitions are not inconsistent with paragraph 1.

ARTICLE 10.6: NEW FINANCIAL SERVICES

Each Party shall permit a financial institution of the other Party to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the first Party. Notwithstanding Article 10.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires such authorization of the new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.[39]

ARTICLE 10.7: TREATMENT OF CERTAIN INFORMATION

Nothing in this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

ARTICLE 10.8: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. A Party may not require financial institutions of the other Party[40] to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

ARTICLE 10.9: NON-CONFORMING MEASURES

1. Articles 10.2 through 10.5 and 10.8 do not apply to:

---

39 The Parties understand that nothing in Article 10.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 10.6.

40 For purposes of this Article, the term "financial institutions of the other Party" includes financial institutions that are located within the territory of the other Party and controlled by persons of the other Party that seek to establish financial institutions within the territory of the Party.

(a) any existing non-conforming measure that is maintained by a Party at
(i) the central level of government, as set out by that Party in its Schedule to Annex 10B,
(ii) a regional level of government, as set out by that Party in its Schedule to Annex 10B, or
(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.2 through 10.4 and 10.8.

2. Annex 10C sets out certain specific commitments by each Party.

3. A non-conforming measure set out in a Party's Schedule to Annex 8A or 8B as a measure to which Article 8.3 (National Treatment), 8.4 (Most-Favored-Nation Treatment), 8.5 (Market Access), or 15.4 (National Treatment and Most-Favored-Nation Treatment) does not apply shall be treated as a non-conforming measure described in paragraph 1(a) to which Article 10.2, 10.3, or 10.4, as the case may be, does not apply, to the extent that the measure, sector, sub-sector or activity set out in the schedule of non-conforming measures is covered by this Chapter.

ARTICLE 10.10: EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapters 9 (Telecommunications), 14 (Electronic Commerce), or 15 (Investment), including specifically Article 9.15 (Relationship to Other Chapters), and in addition Article 8.2.2 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,[41] including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters 9 (Telecommunications), 14 (Electronic Commerce), or 15 (Investment), including specifically Article 9.15 (Relationship to Other Chapters), and in addition Article 8.2.2 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, applies to nondiscriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 8.10 (Transfers and Payments), Article15.7 (Transfers), or Article 15.8 (Performance Requirements).

3. Notwithstanding Articles 8.10 (Transfers and Payments) and 15.7 (Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

---

41 It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity or financial responsibility of individual financial institutions or cross-border financial service suppliers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

ARTICLE 10.11: TRANSPARENCY

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating the ability of financial institutions located outside the territory of the Party, financial institutions of the other Party, and cross-border financial service suppliers to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services. Accordingly, the Financial Services Committee established under Article 10.16 shall consult with the goal of promoting objective and transparent regulatory processes in each Party, taking into account (1) the work undertaken by the Parties in the General Agreement on Trade in Services and the Parties' work in other fora relating to trade in financial services and (2) the importance for regulatory transparency of identifiable policy objectives and clear and consistently applied regulatory processes that are communicated or otherwise made available to the public.

2. In lieu of Article 19.3.2 (Publication), each Party shall, to the extent practicable,

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

3. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

4. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter
.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

8. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

9. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

ARTICLE 10.12: SELF-REGULATORY ORGANIZATIONS
Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 10.2 and 10.3 by such self-regulatory organization.

ARTICLE 10.13: PAYMENT AND CLEARING SYSTEMS
Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

ARTICLE 10.14 : DOMESTIC REGULATION
Except with respect to non-conforming measures listed in its schedule to Annex 10B, each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

ARTICLE 10.15: EXPEDITED AVAILABILITY OF INSURANCE SERVICES
The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. The Parties recognize the importance of consulting, as necessary, regarding any such initiatives.

ARTICLE 10.16: FINANCIAL SERVICES COMMITTEE
1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 10D.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 10.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Committee established under Article 20.1 (Joint Committee) of the results of each meeting.

ARTICLE 10.17: CONSULTATIONS
1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Financial Services Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 10D.

ARTICLE 10.18: DISPUTE SETTLEMENT

1. Article 20.4 (Additional Dispute Settlement Procedures) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 20.4.4(a) (Additional Dispute Settlement Procedures) shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3;

(b) in any other case,

(i) each Party may select panelists meeting the qualifications set out in paragraph 3 or Article 20.4.4(c) (Additional Dispute Settlement Procedures), and
(ii) if the Party complained against invokes Article 10.10 (Exceptions), the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties agree otherwise.

3. Financial services panelists shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and

(c) meet the qualifications set out in Article 20.4.4(b)(ii) and 20.4.4(b)(iii) (Additional Dispute Settlement Procedures).

4. Notwithstanding Article 20.6 (Non-Implementation), where a Panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

ARTICLE 10.19: INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim under Section C of Chapter 15 (Investor- State Dispute Settlement) against the other Party and the respondent invokes Article 10.10, on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Financial Services Committee shall decide the issue of whether and to what extent Article 10.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Joint Committee. The decision shall be binding on the tribunal.

3. Where the Financial Services Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of a panel under Article 20.4.4 (Additional Dispute Settlement Procedures). The panel shall be constituted in accordance with Article 10.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, a tribunal may proceed to decide the matter.

5. For purposes of this Article, **tribunal** means a tribunal established pursuant to Section C of Chapter 15 (Investor-State Dispute Settlement).

ARTICLE 10.20 : DEFINITIONS

For purposes of this Chapter:

1. **central level** means

(a) for the United States, the federal level, and
(b) for Singapore, the national level;

2. **cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies financial services through the cross-border supply of such services;

3. **cross-border supply of a financial service or cross-border trade in financial services** means the supply of a financial service:

(a) from the territory of one Party into the territory of the other Party,

(b) in the territory of one Party by a person of that Party to a person of the other Party, or

(c) by a national of one Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of one Party by an investor of the other Party, or investments of such investors, in financial institutions in the Party's territory.

4. **financial institution** means any financial intermediary or other institution that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

5. **financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

6. **financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) Direct insurance (including co-insurance):
    (i) life
    (ii) non-life
(b) Reinsurance and retrocession;
(c) Insurance intermediation, such as brokerage and agency;
(d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;
(f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
(g) Financial leasing;
(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;
(i) Guarantees and commitments;
(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
    (i) money market instruments (including checks, bills, certificates of deposits);
    (ii) foreign exchange;
    (iii) derivative products including, but not limited to, futures and options;
    (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
    (v) transferable securities;
    (vi) other negotiable instruments and financial assets, including bullion;
(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and supply of services related to such issues;
(l) Money broking;
(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
(p) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

7. **financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

8. **investment** means "investment" as defined in Article 15.1.13 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment. For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article
15.1.13 (Definitions).

9. **investor of a Party** means a Party or state enterprise thereof, or a person of that Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;

10. **new financial service** means, for purposes of Article 10.6, a financial service not supplied in the territory of the first Party that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the first Party's territory.

11. **person of a Party** means "person of a Party" as defined in Article 1.2 (General Definitions) and, for greater certainty, does not include a branch of an institution of a non-party;

12. **public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; for greater certainty, a public entity10-6 shall not be considered a designated monopoly or a government enterprise for purposes of Chapter 12 (Anticompetitive Business Conduct, Designated Monopolies and Government Enterprises);

13. **regional level** means

(a) for the United States, the 50 states, the District of Columbia and Puerto Rico, and 10-6 The Federal Deposit Insurance Corporation of the United States and any entity that administers a deposit insurance scheme in Singapore shall be deemed to be within the definition of public entity for purposes of Chapter 12 (Anticompetitive Business Conduct, Government Monopolies, and Government Enterprises).

(b) Singapore has no government at the regional level; for Singapore, "local government level" means entities with sub-national legislative or executive powers under domestic law, including Town Councils and Community Development Councils.

14. **self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, by statute or delegation from central, regional or local governments or

authorities; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter 12 (Anticompetitive Business Conduct, Designated Monopolies and Government Enterprises).

CHAPTER 4 : CUSTOMS ADMINISTRATION

ARTICLE 4.10 : EXPRESS SHIPMENTS

Each Party shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event that a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express shipments. Such procedures shall:

(a) provide for pre-arrival processing of information related to express shipments;

(b) permit, as a condition for release, the submission of a single document in the form that the Party considers appropriate, such as a single manifest or a single declaration, covering all of the goods in the shipment by an express service company, through, if possible, electronic means;

(c) provide, where possible, for deferred payment of duties, taxes, and fees with appropriate guarantees;

(d) minimize, to the extent possible, the documentation required for the release of express shipments; and

(e) allow, in normal circumstances, for an express shipment to be released within six hours of the submission of necessary customs documentation.

ANNEX 8B
SCHEDULE OF SINGAPORE

Cross-Border Services and Investment
Singapore reserves the right to adopt or maintain any measure that accords treatment to persons of the other Party equivalent to any measure adopted or maintained by the other Party in relation to the provision of storage and warehousing, freight forwarding (excluding freight forwarding by air), inland trucking, container station, and depot services by persons of Singapore.

For the purposes of clarity, this reservation does not extend to express delivery services as defined in the reservation for postal services, which is reproduced as follows for ease of reference –

"Express delivery services means –

(i) the expedited collection, transport and delivery of documents, printed matter, parcels and/or other goods, while tracking the location of, and maintaining control over, such items throughout the supply of the services. Express delivery services involving letters must meet the standards of express letter services stated in paragraph (b) and (c) of the reservation for postal services; and

(ii) services provided in connection therewith, including, but not limited to, customs related services and logistics services for the purposes of providing express delivery services.

Express delivery services may also include collection from an address designated by the sender; release upon signature; guarantee of delivery within a specified time; use of electronic and/or other advanced technologies; and ability of the sender to confirm delivery. Express delivery services does not include (1) air transport services (2) services supplied in the exercise of government authority; and (3) maritime transport services."

8A-Singapore-31

Sector Post and Telecommunications Services
Sub-sector Postal Services (see Description)

Cross-Border Services and Investment:
(a) Only Singapore Post Pte. Ltd. is allowed to convey letters and postcards and perform all incidental services of receiving, collecting, sending, dispatching, and delivering of letters and postcards. A letter is defined as any written or printed communication in the nature of current and personal correspondence. Current correspondence refers to daily correspondence between individuals and organisations, while personal correspondence refers to any correspondence that is addressed to any person, company, or organisation by name or designation. A postcard means a card recognised as a postcard in accordance with the terms of the Convention regulating the affairs of the Universal Postal Union.

(b) Paragraph (a) of this reservation does not apply to express letter services, which is defined as a local or an international express letter service or both. This service is administered under the Telecommunications (Class License for Postal Services) Regulations 1997.

Local express letters must be delivered and received in the same working day, and charges must be more than S$1 per item or 3 times Singapore Post's postage for a 20 gram non-express letter, whichever is higher. An outgoing international express letter must be delivered faster than Singapore Post's published delivery standards for outgoing (non-express) airmail letters and must have a price which is at least 3 times higher than Singapore Post's non-express rate for a 20 gram airmail letter to the same country of destination.

Incoming international express letters must be delivered by the same working day. For the purposes of this reservation, a working day is defined as: 1) Mondays to Fridays, 8am to 5pm; or (2) Saturday 8am to 1pm. Sundays and public holidays are not working days.

(c) Service suppliers providing express letter services must have a local presence in Singapore.

(d) For the purposes of clarity, express delivery services are not covered by paragraph (a) of this reservation.

Express delivery services means –

(i) the expedited collection, transport and delivery of documents, printed matter, parcels and/or other goods, while tracking the location of, and maintaining control over, such items throughout the supply of the services. Express delivery services involving letters must meet the standards of express letter services stated in paragraph (b) and (c); and

(ii) services provided in connection therewith, including, but not limited to, customs related services and logistics services for the purposes of providing express delivery services.

Express delivery services may also include collection from an address designated by the sender; release upon signature; guarantee of delivery within a specified time; use of electronic and/or other advanced technologies; and ability of the sender to confirm delivery. Express delivery services does not include (1) air transport services (2) services supplied in the exercise of government authority; and (3) maritime transport services. (e) Singapore Post Pte Ltd is prohibited from using revenues from the provision of services described in paragraph (a) to cross-subsidise in an anti-competitive manner the price of services described in paragraph (b).

CHAPTER TWENTY TRANSPARENCY

Article 20.1: Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 20.2: Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:
(a) publish in advance any such measure that it proposes to adopt; and
(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 20.3: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 20.4: Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 20.2 to particular persons, goods, or services of the other Party in specific cases that:
(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statemen of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;
(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
(c) its procedures are in accordance with domestic law.

Article 20.5: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:
(a) a reasonable opportunity to support or defend their respective positions; and
(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.
3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action that is the subject of the decision.

Article 20.6: Definitions
For purposes of this Chapter:
administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:
(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or
(b) a ruling that adjudicates with respect to a particular act or practice.

CHAPTER FIVE CUSTOMS ADMINISTRATION
Article 5.1: Publication
1. Each Party shall publish its customs laws, regulations, and administrative procedures on the Internet or a comparable computer-based telecommunications network.

2. Each Party shall designate one or more inquiry points to address inquiries from interested persons concerning customs matters, and shall make available on the Internet information concerning procedures for making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment on such proposed regulations prior to their adoption.

Article 5.2: Release of Goods
Each Party shall:
(a) adopt or maintain procedures providing for the release of goods within a period of time no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;
(b) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;
(c) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees;[1] and
(d) otherwise endeavor to adopt or maintain simplified procedures for the release of goods.

Article 5.3: Automation
Each Party's customs authority shall:
(a) endeavor to use information technology that expedites procedures; and
(b) in deciding on the information technology to be used for this purpose, take into account international standards.

1 A Party may require an importer to provide sufficient guarantee in the form of a surety; a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties for which the goods may be liable.

Article 5.4: Risk Assessment
Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

CHAPTER ONE INITIAL PROVISIONS
Article 1.3: Relation to Other Agreements
The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which both Parties are party.

CHAPTER SEVEN TECHNICAL BARRIERS TO TRADE
Article 7.7: Transparency
3. In order to enhance the opportunity for persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or 5.6 of the TBT Agreement shall: (a) include in the notice a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and
(b) transmit the proposal electronically to the other Party through the inquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement. Each Party should allow at least 60 days from the transmission under subparagraph (b) for persons and the other Party to make comments in writing on the proposal.

Article 7.8: Committee on Technical Barriers to Trade
1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, pursuant to Annex 7.8.

2. The Committee's functions shall include:
(a) monitoring the implementation and administration of this Chapter;
(b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
(d) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;
(e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardization, technical regulations, and conformity assessment procedures;
(f) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them;
(g) at a Party's request, consulting on any matter arising under this Chapter;
(h) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and
(i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter.

3. Where the Parties have had recourse to consultations under paragraph 2(g) such consultations shall, on the agreement of the Parties, constitute consultations under Article 22.4 (Consultations).

4. A Party shall, on request, give favorable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.

5. The Committee shall meet at least once a year unless the Parties otherwise agree.

CHAPTER SIX SANITARY AND PHYTOSANITARY MEASURES

Objectives

The objectives of this Chapter are to protect human, animal, and plant health conditions in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

Article 6.1: Scope and Coverage

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 6.2: General Provisions

1. Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.3: Committee on Sanitary and Phytosanitary Matters

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Matters comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Parties shall establish the Committee not later than 30 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

3. The objectives of the Committee shall be to enhance the implementation by each Party of the SPS Agreement, protect human, animal, and plant life and health, enhance consultation and cooperation on sanitary and phytosanitary matters, and facilitate trade between the Parties.

4. The Committee shall seek to enhance any present or future relationships between the Parties' agencies with responsibility for sanitary and phytosanitary matters.

5. The Committee shall provide a forum for:
(a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
(b) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;
(c) consulting on issues, positions, and agendas for meetings of the WTO SPS Committee, the various Codex committees (including the Codex Alimentarius Commission), the International Plant Protection Convention, the International Office of Epizootics, and other international and regional for a on food safety and human, animal, and plant health;
(d) coordinating technical cooperation programs on sanitary and phytosanitary matters;
(e) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement; and
(f) reviewing progress on addressing sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters.

6. The Committee shall meet at least once a year unless the Parties otherwise agree.

7. The Committee shall perform its work in accordance with the terms of reference referenced in paragraph 2. The Committee may revise the terms of reference and may develop procedures to guide its operation.

8. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Committee. The official agencies and ministries of each Party responsible for such measures shall be set out in the Committee's terms of reference.

9. The Committee may agree to establish *ad hoc* working groups in accordance with the Committee's terms of reference.

Article 6.4: Definitions
For purposes of this Chapter, sanitary or phytosanitary measure means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

CHAPTER ONE INITIAL PROVISIONS
Article 1.3: Relation to Other Agreements
The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which both Parties are party.

CHAPTER SEVENTEEN INTELLECTUAL PROPERTY RIGHTS

The Parties,
Desiring to reduce distortions and impediments to trade between the Parties;

Desiring to enhance the intellectual property systems of the two Parties to account for the latest technological developments and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Desiring to promote greater efficiency and transparency in the administration of intellectual property systems of the Parties;

Desiring to build on the foundations established in existing international agreements in the field of intellectual property, including the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and affirming the rights and obligations set forth in the TRIPS Agreement;

Recognizing the principles set out in the Declaration on the TRIPS Agreement on Public Health, adopted on November 14, 2001, by the WTO at the Fourth WTO Ministerial Conference, held in Doha, Qatar;

Emphasizing that the protection and enforcement of intellectual property rights is a fundamental principle of this Chapter that helps promote technological innovation as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and that encourages the development of social and economic well-being;

Convinced of the importance of efforts to encourage private and public investment for research, development, and innovation;

Recognizing that the business community of each Party should be encouraged to participate in programs and initiatives for research, development, innovation, and the transfer of technology implemented by the other Party;

Recognizing the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected works;

Agree as follows:

Article 17.1: General Provisions

1. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in its domestic law more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.

2. Before January 1, 2007, each Party shall ratify or accede to the *Patent Cooperation Treaty* (1984).

3. Before January 1, 2009, each Party shall ratify or accede to:
(a) the *International Convention for the Protection of New Varieties of Plants* (1991);
(b) the *Trademark Law Treaty* (1994); and
(c) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974).

4. Each Party shall undertake reasonable efforts to ratify or accede to the following agreements in a manner consistent with its domestic law:
(a) the *Patent Law Treaty* (2000);
(b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999); and
(c) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989).

5. Nothing in this Chapter concerning intellectual property rights shall derogate from the obligations and rights of one Party with respect to the other by virtue of the TRIPS Agreement or multilateral intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO).

6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to persons of the other Party treatment no less favorable than it accords to its own persons with regard to the protection1 and enjoyment of such intellectual property rights 1 For purposes of paragraphs 6 and 7, “protection” shall include matters affecting the availability, acquisition, and any benefits derived from such rights. With respect to secondary uses of phonograms by means of analog communications and free over-the-air radio broadcasting, however, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.

7. Each Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of that Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Chapter and where such practices are not applied in a manner that would constitute a disguised restriction on trade.

8. Paragraphs 6 and 7 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

9. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

10. Except as otherwise provided for in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, and which is protected by a Party on that date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter. In respect of paragraphs 10 and

11, copyright and related rights obligations with respect to existing works and phonograms shall be determined solely under Article 17.7(7).

11. Neither Party shall be obligated to restore protection to subject matter which on the date of entry into force of this Chapter has fallen into the public domain in that Party.

12. Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and shall be published,[2] or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. For purposes of paragraphs 6 and 7, "protection" shall also include the prohibition on circumvention of effective technological measures pursuant to Article 17.7(5) and the provisions concerning rights management information pursuant to Article 17.7(6) and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

13. Nothing in this Chapter prevents a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set forth in this Chapter.

14. For the purposes of strengthening the development and protection of intellectual property, and implementing the obligations of this Chapter, the Parties will cooperate, on mutually agreed terms and subject to the availability of appropriated funds, by means of:
(a) educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property;
(b) appropriate coordination, training, specialization courses, and exchange of information between the intellectual property offices and other institutions of the Parties; and
(c) enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.

Article 17.2: Trademarks
1. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include geographical indications[3] and scent marks. Neither Party is obligated to treat certification marks as a separate category in its domestic law, provided that the signs as such are protected.

2. Each Party shall afford an opportunity for interested parties to oppose the application for a trademark**.**

3 A geographical indication is capable of constituting a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good or service is essentially attributable to its geographical origin. name for a good ("common name") including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good.

---

2 The requirement for publication is satisfied by making the written document available to the public via the Internet.
3 Pursuant to Article 20 of the TRIPS Agreement, each Party shall ensure that any measures mandating the use of the term customary in common language as the common

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent third parties not having the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications, for goods or services that are related to those goods or services in respect of which the trademark is registered, where such use would result in a likelihood of confusion.[4]

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

6. Article 6*bis* of the *Paris Convention for the Protection of Industrial Property* (1967) (Paris Convention) shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. Each Party shall, according to its domestic law, provide for appropriate measures to prohibit or cancel the registration of a trademark identical or similar to a well-known trademark, if the use of that trademark by the registration applicant is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the trademark. Such measures to prohibit or cancel registration shall not apply when the registration applicant is the owner of the well-known trademark.

8. In determining whether a trademark is well-known, a Party shall not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

9. Each Party recognizes the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO and shall be guided by the principles contained in this Recommendation.

10. Each Party shall provide a system for the registration of trademarks, which shall include:
(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;
(b) providing to the applicant an opportunity to respond to communications from the trademark authorities, contest an initial refusal, and appeal judicially any final refusal to register; and
(c) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

11. Each Party shall work to provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks.

12. In relation to trademarks, Parties are encouraged to classify goods and services according to the classification of the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979). In addition, each Party shall provide that:

4 It is understood that likelihood of confusion is to be determined under the domestic trademark law of each Party.

(a) each registration or publication which concerns a trademark application or registration and which indicates the relevant goods or services shall indicate the goods or services by their names; and
(b) goods or services may not be considered as being similar to each other simply on the ground that, in any registration or publication, they appear in the same class of any classification system, including the Nice Classification. Conversely, goods or services may not be considered as being dissimilar from each other simply on the ground that, in any registration or publication, they appear in different classes of any classification system, including the Nice Classification.

Article 17.3: Domain Names on the Internet
1. Each Party shall require that the management of its country-code top level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on theprinciples established in the *Uniform Domain-Name Dispute-Resolution Policy* (UDRP), in order to address the problem of trademark cyber-piracy.
2. Each Party shall, in addition, require that the management of its respective ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants, in accordance with each Party's law regarding protection of personal data.

Article 17.4: Geographical Indications5
1. Geographical indications, for the purposes of this Article, are indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs (such as words, including geographical and personal names, letters, numerals, figurative elements, and colors), in any form whatsoever, shall be eligible for protection or recognition as a geographical indication.

2. Chile shall:
(a) provide the legal means to identify and protect geographical indications of United States persons that meet the criteria in paragraph 1; and
(b) provide to United States geographical indications of wines and spirits the same recognition as Chile accords to wines and spirits under the Chilean geographical indications registration system.

3. The United States shall:
(a) provide the legal means to identify and protect the geographical indications of Chile that meet the criteria in paragraph 1; and
(b) provide to Chilean geographical indications of wines and spirits the same recognition as the United States accords to wines and spirits under the Certificate of Label Approval (COLA) system as administered by the Alcohol and Tobacco Tax and Trade Bureau, Department of Treasury (TTB), or any successor agencies. Names that Chile desires to be included in the regulation set forth in 27 CFR Part 12 (Foreign Nongeneric), or any successor to that regulation, will be governed by paragraph 4 of this Article.

4. Each Party shall provide the means for persons of the other Party to apply for protection or petition for recognition of geographical indications. Each Party shall accept applications or petitions, as the case may be, without the requirement for intercession by a Party on behalf of its persons.

5. Each Party shall process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

5 For the purposes of this Article, persons of a Party shall also mean government agencies.

6. Each Party shall make the regulations governing filing of such applications or petitions, as the case may be, available to the public in both printed and electronic form.

7. Each Party shall ensure that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures to effect opposition of geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition.

8. Each Party shall ensure that measures governing the filing of applications or petitions, as the case may be, for geographical indications set out clearly the procedures for these actions. Such procedures shall include contact information sufficient for applicants or petitioners to obtain specific procedural guidance regarding the processing of applications or petitions.

9. The Parties acknowledge the principle of exclusivity incorporated in the Paris Convention and TRIPS Agreement, with respect to rights in trademarks.

10. After the date of entry into force of this Agreement, each Party shall ensure that grounds for refusing protection or registration of a geographical indication include the following:
(a) the geographical indication is confusingly similar to a pre-existing pending good faith application for a trademark or a pre-existing trademark registered in that Party; or
(b) the geographical indication is confusingly similar to a pre-existing trademark, the rights to which have been acquired through use in good faith in that Party.

11. Within six months of the entry into force of this Agreement, each Party shall communicate to the public the means by which it intends to implement paragraphs 2 through 10.

Article 17.5: Copyright[6]

1. Each Party shall provide that authors[7] of literary and artistic works have the right[8] to authorize or prohibit all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (Berne Convention), each Party shall provide to authors of literary and artistic works the right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.[9]

---

6 Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.
7 References to "authors" in this chapter refer also to any successors in interest.
8 With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize shall mean an exclusive right.
9 It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. It is further understood that nothing in this Article precludes a Party from applying Article 11*bis*(2) of the Berne Convention.

3. Each Party shall provide to authors of literary and artistic works the right to authorize the making available to the public of the original and copies[10] of their works through sale or other transfer of ownership.

4. Each Party shall provide that where the term of protection of a work (including a photographic work) is calculated:
(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and
(b) on a basis other than the life of a natural person, the term shall be

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, or
(ii) failing such authorized publication within 50 years from the creation of the work, not less than 70 years from the end of the calendar year of the creation of the work.

Article 17.6: Related Rights[11]
1. Each Party shall provide that performers and producers of phonograms[12] have the right to authorize or prohibit all reproductions of their performances or phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. Each Party shall provide to performers and producers of phonograms the right to authorize the making available to the public of the original and copies[13] of their performances or phonograms through sale or other transfer of ownership.

3. Each Party shall accord the rights provided under this Chapter to the performers and producers of phonograms who are persons of the other Party and to performances or phonograms first published or first fixed in a Party. A performance or phonogram shall be considered first published in any Party in which it is published within 30 days of its original publication.[14]

4. Each Party shall provide to performers the right to authorize or prohibit:
(a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance, and
(b) the fixation of their unfixed performances.

5. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their fixed performances or phonograms, by wire or wireless means,

---

10 The expressions "copies" and "original and copies", being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects, *i.e.*, for this purpose, "copies" means physical copies.
11 Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.
12 References to "performers and producers of phonograms" in this Chapter refer also to any successors in interest.
13 The expressions "copies" and "original and copies", being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects, *i.e.*, for this purpose, "copies" means physical copies.
14 For the application of Article 17.6(3), fixation means the finalization of the master tape or its equivalent.

including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them. (b) Notwithstanding paragraph 5(a) and Article 17.7(3), the right to authorize or prohibit the broadcasting or communication to the public of performances or phonograms through analog communication and free over-the-air broadcasting, and the exceptions or limitations to this right for such activities, shall be a matter of domestic law. Each Party may adopt exceptions and limitations, including compulsory licenses, to the right to authorize or prohibit the broadcasting or communication to the public of performances or phonograms in respect of other noninteractive transmissions in accordance with Article 17.7(3). Such compulsory licenses shall not prejudice the right of the performer or producer of a phonogram to obtain equitable remuneration.

6. Neither Party shall subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.

7. Each Party shall provide that where the term of protection of a performance or phonogram is to be calculated on a basis other than the life of a natural person, the term shall be:
(a) not less than 70 years from the end of the calendar year of the first authorized publication of the performance or phonogram, or
(b) failing such authorized publication within 50 years from the fixation of the performance or phonogram, not less than 70 years from the end of the calendar year of the fixation of the performance or phonogram.

8. For the purposes of Articles 17.6 and 17.7, the following definitions apply with respect to performers and producers of phonograms:

(a) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;
(b) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;[15]
(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;
(d) **producer of a phonogram** means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;
(e) **publication** of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;
(f) **broadcasting** means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent; and
(g) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 17.6(5) “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

15 It is understood that the definition of phonogram provided in this Chapter does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

Article 17.7: Obligations Common to Copyright and Related Rights[16]

1. Each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer and producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

2. (a) Each Party shall provide that for copyright and related rights:

(i) any person owning any economic right, *i.e.*, not a moral right, may freely and separately transfer such right by contract; and

(ii) any person who has acquired or owns any such economic right by virtue of a contract, including contracts of employment underlying the creation of works and phonograms, shall be permitted to exercise that right in its own name and enjoy fully the benefits derived from that right.

(b) Each Party may establish:

(i) which contracts of employment underlying the creation of works or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and

(ii) reasonable limits to the provisions in paragraph 2(a) to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

3. Each Party shall confine limitations or exceptions to rights to certain special cases which do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.[17]

4. In order to confirm that all federal or central government agencies use computer software only as authorized, each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees to actively regulate the acquisition and management of software for such government use. Such measures may take the form of procedures such as preparing and maintaining inventories of software present on agencies' computers and inventories of software licenses.

5. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, and producers of phonograms in connection with the

---

16 Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.

17 Article 17.7(3) permits a Party to carry forward and appropriately extend into the digital environment limitations and exceptions in its domestic laws which have been considered acceptable under the Berne Convention. Similarly, these provisions permit a Party to devise new exceptions and limitations that are appropriate in the digital network environment. For works, other than computer software, and other subjectmatter, such exceptions and limitations may include temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable (a) a lawful transmission in a network between third parties by an intermediary; or (b) a lawful use of a work or other subject-matter to be made; and which have no independent economic significance.

Article 17.7(3) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention, the WIPO Copyright Treaty (1996), and the WIPO Performances and Phonograms Treaty (1996).

exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, protected by copyright and related rights:

(a) each Party shall provide that any person who knowingly[18] circumvents without authorization of the right holder or law consistent with this Agreement any effective technological measure that controls access to a protected work, performance, or phonogram shall be civilly liable and, in appropriate circumstances, shall be criminally liable, or said conduct shall be considered an aggravating circumstance of another offense.[19] No Party is required to impose civil or criminal liability for a person who circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, but does not control access to such work.

(b) each Party shall also provide administrative or civil measures, and, where the conduct is willful and for prohibited commercial purposes, criminal measures with regard to the manufacture, import, distribution, sale, or rental of devices, products, or components or the provision of services which:

(i) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure, or
(ii) do not have a commercially significant purpose or use other than to circumvent any effective technological measure, or
(iii) are primarily designed, produced, adapted, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures. Each Party shall ensure that due account is given, *inter alia*, to the scientific or educational purpose of the conduct of the defendant in applying criminal measures under any provisions implementing this subparagraph. A Party may exempt from criminal liability, and if carried out in good faith without knowledge that the conduct is prohibited, from civil liability, acts prohibited under this subparagraph that are carried out in connection with a nonprofit library, archive or educational institution.

(c) Each Party shall ensure that nothing in subparagraphs (a) and (b) affects rights, remedies, limitations, or defenses with respect to copyright or related rights infringement.

(d) Each Party shall confine limitations and exceptions to measures implementing subparagraphs (a) and (b) to certain special cases that do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures. In particular, each Party may establish exemptions and limitations to address the following situations and activities in accordance with subparagraph (e):

(i) when an actual or likely adverse effect on noninfringing uses with respect to a particular class of works or exceptions or limitation to copyright or related rights with respect to a class of users is demonstrated or recognized through a legislative or administrative proceeding established by law, provided that any limitation or exception adopted in reliance upon this subparagraph (d)(i) shall have effect for a period of not more than three years from the date of conclusion of such proceeding;
(ii) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not

18 For purposes of paragraph 5, knowledge may be demonstrated through reasonable evidence taking into account the facts and circumstances surrounding the alleged illegal act.
19 Paragraph 5 does not obligate a Party to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such product does not otherwise violate any measure implementing paragraph 5(b).

been readily available to that person,[20] [21] for the sole purpose of

(iii) noninfringing good faith activities, carried out by a researcher who has lawfully obtained a copy, performance, or display of a work, and who has made a reasonable attempt to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of encryption technologies;[22]

(iv) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that does not itself violate any measures implementing subparagraphs (a) and (b);

(v) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(vi) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;

(vii) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, or similar government activities; and

(viii) access by a nonprofit library, archive, or educational institution to a work not otherwise available to it, for the sole purpose of making acquisition decisions.

(e) Each Party may apply the exceptions and limitations for the situations and activities set forth in subparagraph (d) as follows:

(i) any measure implementing subparagraph (a) may be subject to the exceptions and limitations with respect to each situation and activity set forth in subparagraph (d).

(ii) any measure implementing subparagraph (b), as it applies to effective technological measures that control access to a work, may be subject to exceptions and limitations with respect to the activities set forth in subparagraphs (d)(ii), (iii), (iv), (v), and (vii).

(iii) any measure implementing subparagraph (b), as it applies to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to the activities set forth in subparagraph (d)(ii) and (vii).

(f) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a work, performance, phonogram, or any other protected material, or that protects any copyright or any rights related to copyright, and cannot, in the usual case, be circumvented accidentally.

6. In order to provide adequate and effective legal remedies to protect rights management information:

---

20 For greater certainty, elements of a computer program are not readily available to a person seeking to engage in noninfringing reverse engineering when they cannot be obtained from the literature on the subject, from the achieving interoperability of an independently created computer program with other programs; copyright holder, or from sources in the public domain.

21 Such activity occurring in the course of research and development is not excluded from this exception.

22 Such activity occurring in the course of research and development is not excluded from this exception.

(a) each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;
(ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or
(iii) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable, upon the suit of any injured person, and subject to the remedies in Article 17.11(5). Each Party shall provide for application of criminal procedures and remedies at least in cases where acts prohibited in the subparagraph are done willfully and for purposes of commercial advantage. A Party may exempt from criminal liability prohibited acts done in connection with a nonprofit library, archive, educational institution, or broadcasting entity established without a profit-making purpose.

(b) **Rights management information** means:

(i) information which identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;
(ii) information about the terms and conditions of the use of the work, performance, or phonogram; and
(iii) any numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance, or phonogram or appears in conjunction with the communication or making available of a work, performance, or phonogram to the public. Nothing in paragraph 6(a) requires the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the owner's work, performance, or phonogram or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

7. Each Party shall apply Article 18 of the Berne Convention, *mutatis mutandis*, to all the protections of copyright and related rights and effective technological measures and rights management information in Articles 17.5, 17.6, and 17.7.

Article 17.8: Protection of Encrypted Program-Carrying Satellite Signals

1. Each Party shall make it:

(a) a civil or criminal offense to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing[23] that the device or system's principal function is solely to assist in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) a civil or criminal offense willfully to receive or further distribute an encrypted program-carrying satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide that any person injured by any activity described in subparagraphs 1(a) or 1(b), including any person that holds an interest in the encrypted programming signal or the content of that signal, shall be permitted to initiate a civil action under any measure implementing such subparagraphs.

23 For purposes of paragraph 1, knowledge may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.

Article 17.9: Patents

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful", respectively.

2. Each Party will undertake reasonable efforts, through a transparent and participatory process, to develop and propose legislation within 4 years from the entry into force of this Agreement that makes available patent protection for plants that are new, involve an inventive step, and are capable of industrial application.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. If a Party permits the use by a third party of the subject matter of a subsisting patent to support an application for marketing approval or sanitary permit of a pharmaceutical product, the Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of the Party other than for purposes related to meeting requirements for marketing approval or the sanitary permit, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for issuing marketing approval or sanitary permits in the exporting Party.

5. A Party may revoke or cancel a patent only when grounds exist that would have justified a refusal to grant the patent.[24]

6. Each Party shall provide for the adjustment of the term of a patent, at the request of the patent owner, to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall be understood to include a delay in the issuance of the patent of more than five years from the date of filing of the application in the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods of time attributable to actions of the patent applicant need not be included in the determination of such delays.

7. Neither Party shall use a public disclosure to bar patentability based upon a lack of novelty or inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant and (b) occurs within 12 months prior to the date of filing of the application in the Party.

Article 17.10: Measures Related to Certain Regulated Products

1. If a Party requires the submission of undisclosed information concerning the safety and efficacy of a pharmaceutical or agricultural chemical product which utilizes a new chemical entity, which product has not been previously approved, to grant a marketing approval or sanitary permit for such product, the Party shall not permit third parties not having the consent of the person providing the information to market a product based on this new chemical entity, on the basis of the approval granted to the party submitting such information. A Party shall maintain this prohibition for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural

24 Fraud in obtaining a patent may constitute grounds for revocation or cancellation.

chemical product.[25] Each Party shall protect such information against disclosure except where necessary to protect the public.

2. With respect to pharmaceutical products that are subject to a patent, each Party shall:

(a) make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process;

(b) make available to the patent owner the identity of any third party requesting marketing approval effective during the term of the patent; and

(c) not grant marketing approval to any third party prior to the expiration of the patent term, unless by consent or acquiescence of the patent owner.

Article 17.11: Enforcement of Intellectual Property Rights

General Obligations
1. Each Party shall ensure that procedures and remedies set forth in this Article for enforcement of intellectual property rights are established in accordance with its domestic law.[26] Such administrative and judicial procedures and remedies, both civil and criminal, shall be made available to the holders of such rights in accordance with the principles of due process that each Party recognizes as well as with the foundations of its own legal system.

2. This Article does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that already existing for the enforcement of law in general, or

(b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general. The distribution of resources for the enforcement of intellectual property rights shall not excuse a Party from compliance with the provisions of this Article.

3. Final decisions on the merits of a case of general application shall be in writing and shall state the reasons or the legal basis upon which decisions are based.

4. Each Party shall publicize or make available to the public information that each Party might collect regarding its efforts to provide effective enforcement of intellectual property rights, including statistical information.

5. Each Party shall make available the civil remedies set forth in this Article for the acts described in the Articles 17.7(5) and 17.7(6).

---

25 Where a Party, on the date of its implementation of the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use which conferred a period of protection shorter than that specified in paragraph 1, that Party may retain such system notwithstanding the obligations of paragraph 1.
26 Nothing in this Chapter prevents a Party from establishing or maintaining appropriate judicial or administrative procedural formalities for this purpose that do not impair each Party's rights and obligations under this Agreement.

6. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:

(a) the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner,[27] shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance, or phonogram.

(b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. A Party may require, as a condition for according such presumption of subsistence, that the work appear on its face to be original and that it bear a publication date not more than 70 years prior to the date of the alleged infringement.

Civil and Administrative Procedures[28] *and Remedies*

7. Each Party shall make available to right holders29 civil judicial procedures concerning the enforcement of any intellectual property right.

8. Each Party shall provide that:

(a) In civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer engaged in infringing activity, and

(ii) at least in the case of infringements of trademark, copyright, or related rights, the profits of the infringer that are attributable to the infringement and are not already taken into account in determining injury.

(b) In determining injury to the right holder, the judicial authorities shall, *inter alia*, consider the legitimate retail value of the infringed goods.

9. In civil judicial proceedings, each Party shall, at least with respect to works protected by copyright or related rights and trademark counterfeiting, establish pre-established damages, prescribed by each Party's domestic law, that the judicial authorities deem reasonable in light of the goals of the intellectual property system and the objectives set forth in this Chapter.

10. Each Party shall provide that, except in exceptional circumstances, its judicial authorities have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights and trademark counterfeiting, that the prevailing right holder shall be paid the court costs or fees and reasonable attorney's fees by the infringing party.

11. In civil judicial proceedings concerning copyright and related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, and of material and implements by means of which such goods are produced where necessary to prevent further infringement.

12. In civil judicial proceedings, each Party shall provide that:

---

27 Each Party may establish the means by which it shall determine what constitutes the "usual manner" for a particular physical support.

28 For the purposes of this Article, civil judicial procedures mean those procedures as applied to the protection and enforcement of intellectual property rights.

29 For the purposes of this Article, the term "right holder" shall include duly authorized licensees as well as federations and associations having legal standing and authorization to assert such rights.

(a) its judicial authorities shall have the authority to order, at their discretion, the destruction, except in exceptional cases, of the goods determined to be infringing goods;

(b) the charitable donation of goods that infringe copyright and related rights shall not be ordered by the judicial authorities without the authorization of the right holder other than in special cases that do not conflict with the normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder;

(c) the judicial authorities shall have the authority to order, at their discretion, that material and implements actually used in the manufacture of the infringing goods be destroyed. In considering such requests, the judicial authorities shall take into account, *inter alia*, the need for proportionality between the gravity of the infringement and remedies ordered, as well as the interests of third parties holding an ownership, possessory, contractual, or secured interest; and

(d) in regard to counterfeited trademarked goods, the simple removal of the trademark unlawfully affixed shall not permit release of the goods into the channels of commerce. However, such goods may be donated to charity when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark.

13. In civil judicial proceedings, each Party shall provide that the judicial authorities shall have the authority to order the infringer to provide any information the infringer may have regarding persons involved in the infringement, and regarding the distribution channels of infringing goods. Judicial authorities shall also have the authority to impose fines or imprisonment on infringers who do not comply with such orders, in accordance with each Party's domestic law.

14. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in paragraphs 1 through 13.

Provisional Measures

15. Each Party shall provide that requests for relief *inaudita altera parte* shall be acted upon expeditiously in accordance with the judicial procedural rules of that Party.

16. Each Party shall provide that:

(a) its judicial authorities have the authority to require the applicant for any provisional measure to provide any reasonably available evidence in order to satisfy themselves to a sufficient degree of certainty that the applicant is the holder of the right in question[30] and that infringement of such right is imminent, and to order the applicant to provide a reasonable security or equivalent assurance in an amount that is sufficient to protect the defendant and prevent abuse, set at a level so as not to unreasonably deter recourse to such procedures.

(b) in the event that judicial or other authorities appoint experts, technical or otherwise, that must be paid by the parties, such costs shall be set at a reasonable level taking into account the work performed, or if applicable, based on standardized fees, and shall not unreasonably deter recourse to provisional relief.

30 In accordance with the provisions in paragraph 6(a).

Special Requirements Related to Border Measures

17. Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods[31] into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the Party of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

18. Each Party shall provide the competent authorities with the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

19. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

20. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, destined for export, or moving in transit are counterfeit or pirated. In case of goods in transit, each Party, in conformity with other international agreements subscribed

> (a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
> (b) **pirated copyright goods** means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

21. Each Party shall provide that:

> (a) goods that have been found to be pirated or counterfeit by the competent authorities shall be destroyed, except in exceptional cases.
> (b) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.
> (c) in no event shall the competent authorities engage in, or permit, the re-exportation of counterfeit or pirated goods, nor shall they permit such goods to be subject to other customs procedures.

31 For the purposes of paragraphs 17 through 19:

Criminal Procedures and Remedies

22. Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that:

(a) (i) willfull infringement[32]of copyright and related rights for a commercial advantage or financial gain, is subject to criminal procedures and penalties;[33]
(ii) copyright or related rights piracy on a commercial scale includes the willful infringing reproduction or distribution, including by electronic means, of copies with a significant aggregate monetary value, calculated based on the legitimate retail value of the infringed goods;
(b) available remedies include sentences of imprisonment and/or monetary fines that are sufficient to provide a deterrent to future infringements and present a level of punishment consistent with the gravity of the offense, which shall be applied by the judicial authorities in light of, *inter alia,* these criteria;
(c) judicial authorities have the authority to order the seizure of suspected counterfeit or pirated goods, assets legally traceable to the infringing activity, documents and related materials, and implements that constitute evidence of the offense. Each Party shall further provide that its judicial authorities have the authority to seize items in accordance with its domestic law. Items that are subject to seizure pursuant to a search order need not be individually identified so long as they fall within general categories specified in the order;
(d) judicial authorities have the authority to order, among other measures, the forfeiture of any assets legally traceable to the infringing activity, and the forfeiture and destruction of all counterfeit and pirated goods and, at least with respect to copyright and related rights piracy, any related materials and implements actually used in the manufacture of the pirated goods. Parties shall not make compensation available to the infringer for any such forfeiture or destruction; and
(e) Appropriate authorities, as determined by each Party, have the authority, in cases of copyright and related rights piracy and trademark counterfeiting, to exercise legal action *ex officio* without the need for a formal complaint by a person or right holder.

Limitations on Liability for Internet Service Providers

23. (a) For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright34 covered under this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework set forth in this Article:

(i) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

---

32 For purposes of paragraph 22, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.
33 For purposes of paragraph 22, commercial advantage or financial gain shall be understood to exclude *de minimis* infringements. Nothing in this Agreement prevents prosecutors from exercising any discretion that they may have to decline to pursue cases.
34 For purposes of paragraph 23, “copyright” shall also include related rights.

(ii) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth below.

(b) These limitations shall preclude monetary relief and provide reasonable limitations on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(i) transmitting, routing, or providing connections for material without modification of its content;[35]

(ii) caching carried out through an automatic process;

(iii) storage at the direction of a user of material residing on a system or network controlled or operated by or for the provider, including e-mails and its attachments stored in the provider's server, and web pages residing on the provider's server; and

(iv) referring or linking users to an online location by using information location tools, including hyperlinks and directories. These limitations shall apply only where the provider does not initiate the transmission, or select the material or its recipients (except to the extent that a function described in subparagraph (iv) in itself entails some form of selection). This paragraph does not preclude the availability of other defenses to copyright infringement that are of general applicability, and qualification for the limitations as to each function shall be considered separately from qualification for the limitations as to other functions.

(c) With respect to function (b)(ii), the limitations shall be conditioned on the service provider:

(i) complying with conditions on user access and rules regarding the updating of the cached material imposed by the supplier of the material;

(ii) not interfering with technology consistent with widely accepted industry standards lawfully used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(iii) expeditiously removing or disabling access, upon receipt of an effective notification of claimed infringement in accordance with subparagraph (f), to cached material that has been removed or access to which has been disabled at the originating site.

With respect to functions (b)(iii) and (iv), the limitations shall be conditioned on the service provider:

(i) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(ii) expeditiously removing or disabling access to the material residing on its system or network upon obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, including through effective notifications of claimed infringement in accordance with subparagraph (f); and

(iii) publicly designating a representative to receive such notifications.

(d) Eligibility for application of the limitations in this paragraph shall be conditioned on the service provider:

(i) adopting and reasonably implementing[36] a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(ii) accommodating and not interfering with standard technical measures that lawfully protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of interested parties, approved by relevant authorities, as applicable, that

35 Modification of the content of material shall not include technological manipulation of material for the purpose of facilitating network transmission, such as division into packets.

36 A Party may determine in its domestic law that "reasonably implementing" entails, *inter alia*, making such policy continuously available to its users of its system or network.

are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks. Eligibility for application of the limitations in this paragraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(e) If the service provider qualifies for the limitation with respect to function (b)(i), court-ordered relief to compel or restrain certain actions shall be limited to measures to terminate specified accounts, or to take reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in subparagraph (b), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider and users or subscribers among comparably effective forms of relief. Any such relief shall be issued with due regard for the relative burden to the service provider, to users or subscribers and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, such relief shall be available only where the service provider has received notice and an opportunity to appear before the judicial authority.

(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically[37] signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, *mutatis mutandis*, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party.

Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(g) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, it shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the supplier of the material that it has done so and, if the supplier makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the original notifying party seeks judicial relief within a reasonable time.

(h) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(i) **Service provider** means, for purposes of function (b)(i), a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of

37 In accordance with domestic law.

the user's choosing, or for purposes of functions (b)(ii) through (iv) a provider or operator of facilities for online services (including in cases where network access is provided by another provider) or network access.

Article 17.12: Final Provisions

1. Except as otherwise provided in this Chapter, each Party shall give effect to the provisions of this Chapter upon the date of entry into force of this Agreement.

2. In those cases in which the full implementation of the obligations contained in this Chapter requires a Party to amend its domestic legislation or additional financial resources, those amendments and financial resources shall be in force or available as soon as practicable, and in no event later than:

(a) two years from the date of entry into force of this Agreement, with respect to the obligations in Article 17.2 on trademarks, Article 17.4(1) through17.4(9) on geographical indications, Article 17.9(1), 17.9(3) through 17.9(7) on patents, and Articles 17.5(1) and 17.6(1) on temporary copies;
(b) four years from the date of entry into force of this Agreement, with respect to the obligations in Article 17.11 on enforcement (including border measures), and Article 17.6(5) with respect to the right of communication to the public, and non-interactive digital transmissions, for performers and producers of phonograms; and
(c) five years from the date of entry into force of this Agreement, with respect to the obligations in Article 17.7(5) on effective technological measures.

Article 17.5: Copyright[38]

1. Each Party shall provide that authors[39] of literary and artistic works have the right[40] to authorize or prohibit all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (Berne Convention), each Party shall provide to authors of literary and artistic works the right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.[41]

3. Each Party shall provide to authors of literary and artistic works the right to authorize the making available to the public of the original and copies[42] of their works through sale or other transfer of ownership.

---

38 Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.
39 References to "authors" in this chapter refer also to any successors in interest.
40 With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize shall mean an exclusive right.
41 It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. It is further understood that nothing in this Article precludes a Party from applying Article 11*bis*(2) of the Berne Convention.
42 The expressions "copies" and "original and copies", being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects, *i.e.*, for this purpose, "copies" means physical copies.

4. Each Party shall provide that where the term of protection of a work (including a photographic work) is calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and (b) on a basis other than the life of a natural person, the term shall be

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, or

(ii) failing such authorized publication within 50 years from the creation of the work, not less than 70 years from the end of the calendar year of the creation of the work.

Article 17.2: Trademarks

1. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include geographical indications[43] and scent marks. Neither Party is obligated to treat certification marks as a separate category in its domestic law, provided that the signs as such are protected.

2. Each Party shall afford an opportunity for interested parties to oppose the application for a trademark**.**

3. Pursuant to Article 20 of the TRIPS Agreement, each Party shall ensure that any measures mandating the use of the term customary in common language as the common name for a good ("common name") including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good.

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent third parties not having the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications, for goods or services that are related to those goods or services in respect of which the trademark is registered, where such use would result in a likelihood of confusion.[44]

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

6. Article 6*bis* of the *Paris Convention for the Protection of Industrial Property* (1967) (Paris Convention) shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. Each Party shall, according to its domestic law, provide for appropriate measures to prohibit or cancel the registration of a trademark identical or similar to a well-known trademark, if the use of that trademark by the registration applicant is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark with the owner of the well-

43 A geographical indication is capable of constituting a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good or service is essentially attributable to its geographical origin.

44 It is understood that likelihood of confusion is to be determined under the domestic trademark law of each Party.

known trademark, or constitutes unfair exploitation of the reputation of the trademark. Such measures to prohibit or cancel registration shall not apply when the registration applicant is the owner of the well-known trademark.

8. In determining whether a trademark is well-known, a Party shall not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

9. Each Party recognizes the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO and shall be guided by the principles contained in this Recommendation.

10. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;

(b) providing to the applicant an opportunity to respond to communications from the trademark authorities, contest an initial refusal, and appeal judicially any final refusal to register; and

(c) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

11. Each Party shall work to provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks.

12. In relation to trademarks, Parties are encouraged to classify goods and services according to the classification of the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979). In addition, each Party shall provide that:

(a) each registration or publication which concerns a trademark application or registration and which indicates the relevant goods or services shall indicate the goods or services by their names; and

(b) goods or services may not be considered as being similar to each other simply on the ground that, in any registration or publication, they appear in the same class of any classification system, including the Nice Classification. Conversely, goods or services may not be considered as being dissimilar from each other simply on the ground that, in any registration or publication, they appear in different classes of any classification system, including the Nice Classification.

Article 17.9: Patents

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms “inventive step” and “capable of industrial application” as being synonymous with the terms “non-obvious” and “useful”, respectively.

2. Each Party will undertake reasonable efforts, through a transparent and participatory process, to develop and propose legislation within 4 years from the entry into force of this Agreement that makes available patent protection for plants that are new, involve an inventive step, and are capable of industrial application.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. If a Party permits the use by a third party of the subject matter of a subsisting patent to support an application for marketing approval or sanitary permit of a pharmaceutical product, the Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of the Party other than for purposes related to

meeting requirements for marketing approval or the sanitary permit, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for issuing marketing approval or sanitary permits in the exporting Party.

5. A Party may revoke or cancel a patent only when grounds exist that would have justified a refusal to grant the patent.[45]

6. Each Party shall provide for the adjustment of the term of a patent, at the request of the patent owner, to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall be understood to include a delay in the issuance of the patent of more than five years from the date of filing of the application in the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods of time attributable to actions of the patent applicant need not be included in the determination of such delays.

7. Neither Party shall use a public disclosure to bar patentability based upon a lack of novelty or inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant and (b) occurs within 12 months prior to the date of filing of the application in the Party.

CHAPTER THREE NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 3.2: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to this end Article III of GATT 1994, and its interpretative notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.1

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3.2.

Section B - Tariff Elimination
Article 3.3: Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with Annex 3.3.

3. The United States shall eliminate customs duties on any non-agricultural originating goods that, after the date of entry into force of this Agreement, are designated as articles eligible for duty-free treatment under the U.S. *Generalized System of Preferences*, effective from the date of such designation.

---

45 Fraud in obtaining a patent may constitute grounds for revocation or cancellation.

4. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 3.3.

5. For greater certainty, a Party may:
(a) raise a customs duty back to the level established in its Schedule to Annex 3.3 following a unilateral reduction; or
(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Annex 3.3 Tariff Elimination
1. Except as otherwise provided in a Party's Schedule attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 3.3(2):

(a) duties on goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force;
(b) duties on goods provided for in the items in staging category B in a Party's Schedule shall be removed in four equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year four;
(c) duties on goods provided for in the items in staging category C in a Party's Schedule shall be removed in eight equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year eight;
(d) duties on goods provided for in the items in staging category D in a Party's Schedule shall be removed in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year ten;
(e) duties on goods provided for in the items in staging category E in a Party's schedule shall be removed in twelve equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year twelve;
(f) goods provided for in the items in staging category F in a Party's schedule shall continue to receive duty-free treatment;
(g) duties on goods provided for in the items in staging category G shall remain at base rates during years one through four. Duties on these goods shall be reduced by 8.3 percent of the base rate on January 1 of year five, and by an additional 8.3 percent of the base rate each year thereafter though year eight. Beginning January 1 of year nine, duties on these goods shall be reduced by an additional 16.7 percent of the base rate annually through year twelve and shall be duty-free effective January 1 of year twelve; and
(h) duties on goods provided for in the items in staging category H shall remain at base rates during years one and two. Beginning January 1 of year three, duties on these goods shall be removed in eight equal annual stages, and such goods shall be duty-free effective January 1 of year ten.

2. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule attached to this Annex.

3. For the purpose of the elimination of customs duties in accordance with Article 3.3, interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

CHAPTER TWELVE FINANCIAL SERVICES
Article 12.4: Market Access for Financial Institutions

Neither Party may, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory adopt or maintain measures that:

(a) impose limitations on:
(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive financial service suppliers, or the requirements of an economic needs test,
(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, or
(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 12.16: Consultations
1. A Party may request in writing consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Officials from the authorities specified in Annex 12.15 shall participate in the consultations under this Article.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 12.11: Transparency
1. The Parties recognize that transparent regulations and policies and reasonable, objective, and impartial administration governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets.[46]

2. In lieu of Article 20.2 (Publication), each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

46 The Parties understand that a Party may take measures for prudential reasons through regulatory or administrative authorities, in addition to those who have regulatory responsibilities with respect to financial institutions, such as ministries or departments of labor.

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

3. Each Party's regulatory authorities shall make available to interested persons their equirements, including any documentation required, for completing applications relating to the supply of financial services.

4. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

8. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

9. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

Article 12.12: Self-Regulatory Organizations
Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a selfregulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such selfregulatory organization.

Article 12.4: Market Access for Financial Institutions
Neither Party may, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory adopt or maintain measures that:

(a) impose limitations on:
(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive financial service suppliers, or the requirements of an economic needs test,
(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, or
(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply

of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

CHAPTER THIRTEEN TELECOMMUNICATIONS

Article 13.4: Additional Obligations Relating to Conduct of Major Suppliers of Public Telecommunications Services[47]

Treatment by Major Suppliers

1. Subject to Annex 13.4(1), each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party non-discriminatory treatment regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) For purposes of subparagraph (a), examples of anti-competitive practices include:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anti-competitive results; and

(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services.

Unbundling of Network Elements

3. (a) Each Party shall provide its competent body the authority to require that major suppliers in its territory provide suppliers of public telecommunications services of the other Party access to network elements on an unbundled basis for the supply of those services on terms and conditions and at cost-oriented rates that are reasonable and non-discriminatory.

(b) Which network elements will be required to be made available in its territory and which suppliers may obtain such elements, will be determined in accordance with national law and regulation(s).

(c) In determining the network elements to be made available, each Party's competent body shall consider, at a minimum, in accordance with national law and regulation:

(i) whether access to such network elements as are proprietary in nature is necessary, and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other Party to provide the services they seek to offer; or

(ii) other factors as established in national law or regulation,

as that body construes these factors.

Co-Location

4. (a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection or access to

47 For purposes of this Agreement, this Article does not apply to suppliers of commercial mobile services. Nothing in this Agreement shall be construed to preclude an authority from imposing measures set forth in this Article upon suppliers of commercial mobile services.

unbundled network elements on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.
(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide:

(i) alternative solutions; or
(ii) facilitate virtual co-location,
on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.

(c) Each Party may determine which premises shall be subject to subparagraphs (a) and (b).

Resale

5. Each Party shall ensure that major suppliers in its territory:
(a) offer for resale, at reasonable rates,3 to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and
(b) subject to Annex 13.4(5)(b), do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.

Number Portability

6. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.

Dialing Parity

7. Each Party shall ensure that major suppliers in its territory provide dialing parity to suppliers of public telecommunications services of the other Party and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

Interconnection

8. (a) General Terms and Conditions
Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(i) at any technically feasible point in the major supplier's network; The standard of reasonableness in this paragraph is satisfied, among others, by wholesale rates or costoriented rates set pursuant to domestic law and regulations.
(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
(iii) of a quality no less favorable than that provided by such major Supplier for its own like services, or for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;
(iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
(v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers
Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

(i) a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(ii) the terms and conditions of an existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require each major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements with Major Suppliers

Each Party shall:

(i) require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body, and

(ii) make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in such territory.

Leased Circuits Services

9. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services, on terms, conditions, and at rates that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits that are part of the public telecommunications services to enterprises of the other Party at flat-rate prices that are cost-oriented.

Article 13.12: Procedures for Resolving Domestic Telecommunications Disputes

Further to Articles 20.4 (Administrative Proceedings) and 20.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

(a) (i) Each Party shall ensure that enterprises of the other Party may have recourse to a national telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 13.2 through 13.5.

(ii) Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in its territory may have recourse, within a reasonable and publicly available period of time after the supplier requests interconnection, to a national telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

(b) Each Party shall ensure that an enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of a national telecommunications regulatory body or other relevant body may petition the body to reconsider its determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body or other relevant body unless an appropriate authority stays such determination or decision.

Judicial Review

(c) Each Party shall ensure that any enterprise aggrieved by a determination or decision of the national telecommunications regulatory body or other relevant body may obtain judicial review of such determination or decision by an impartial and independent judicial authority.

Annex 11.6
Express Delivery

1. The Parties affirm that measures affecting express delivery services are subject to the provisions of this Agreement.

2. For purposes of this Agreement, express delivery services shall be defined as the expedited collection, transport, delivery, tracking, and maintaining control of documents, printed matter, parcels, and/or other goods throughout the supply of the service.

3. The Parties express their desire to maintain the level of open market access existing on the date this Agreement is signed.

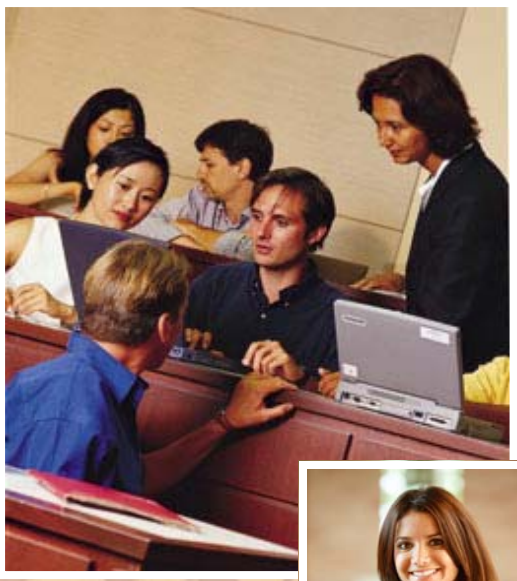
4. Chile agrees that it will not impose any restrictions on express delivery services which are not in existence on the date this Agreement is signed. Chile confirms that it has no intention to direct revenues from its postal monopoly to benefit express delivery services as defined in paragraph 2.

University of Southern California

established in 1880 | leading research university

Global Initiatives of the Marshall School of Business

- **International MBA Program for Mid-Career Managers (IBEAR)**
  Intensive 12-month program in international management that gives business leaders the necessary tools to excel in a fast-paced global environment
- **Global Executive MBA Program (GEMBA)**
  21-month MBA program for full-time managers in Shanghai and Los Angeles
- **Pacific Rim Education Program (PRIME)**
  Required 7-week country-specific intensive training for full-time MBA students culminates with a 10-day overseas trip
- **Asia/Pacific Business Outlook (APBO)**
  Annual conference that provides unprecedented access for business professionals to intelligence on over a dozen economies
- **APEC Business Advisory Council Research Project**
  Marshall student research for 21 Pacific Rim countries and present findings to over 60 CEOs at the annual ABAC Conference
- **Custom Executive Education**
  Custom program tailored to meet specific needs of companies
- **Study Abroad and Internship Programs**
  300 undergraduate students are sent abroad to study in 12 locations and work in over 75 different companies



GLOBAL INNOVATIVE COLLABORATIVE

Marshall at a Glance

- Premier, nationally-ranked program
- Oldest accredited, Ph.D. granting, business school in the Western United States
- Alumni communities in 44 countries
- 12 Research Centers of Excellence
- 3,900 students from nearly all 50 states & 150 countries
- 20% international students
- 13 international exchange partner institutions

USC Marshall
SCHOOL OF BUSINESS

WWW.MARSHALL.USC.EDU